TEXAS REGISTER

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IN THIS ISSUE

THE GOVERNOR

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

Appointments

Appointments for September 8, 2022

Appointed to the Environmental Flows Advisory Group for a term to expire at the pleasure of the Governor, Brooke T. Paup of Austin, Texas (replacing Kathleen T. Jackson of Beaumont).

Greg Abbott, Governor

TRD-202203701

♦ ♦ ♦

Proclamation 41-3929

TO ALL WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on March 18, 2022, as amended and renewed in a number of subsequent proclamations, certifying that the wildfires which began on February 23, 2022, posed an imminent threat of widespread or severe damage, injury, or loss of life or property in Andrews, Aransas, Archer, Bee, Bell, Blanco, Borden, Bosque, Brewster, Brooks, Brown, Cameron, Coke, Coleman, Comanche, Concho, Cooke, Crane, Crockett, Culberson, Dawson, Dimmit, Duval, Eastland, Ector, Edwards, Erath, Gaines, Garza, Grayson, Hemphill, Hidalgo, Hood, Howard, Hudspeth, Jeff Davis, Jim Hogg, Jim Wells, Kenedy, Kimble, Kleberg, Live Oak, Martin, Mason, Maverick, McCulloch, Medina, Menard, Midland, Nueces, Palo Pinto, Parker, Pecos, Potter, Presidio, Randall, Reagan, Real, Refugio, Roberts, Runnels, Starr, Taylor, Terrell, Tom Green, Upton, Wichita, Willacy, Williamson, Winkler, Wise, Zapata, and Zavala counties; and

WHEREAS, those same conditions continue to exist in these counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for the counties listed above.

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

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

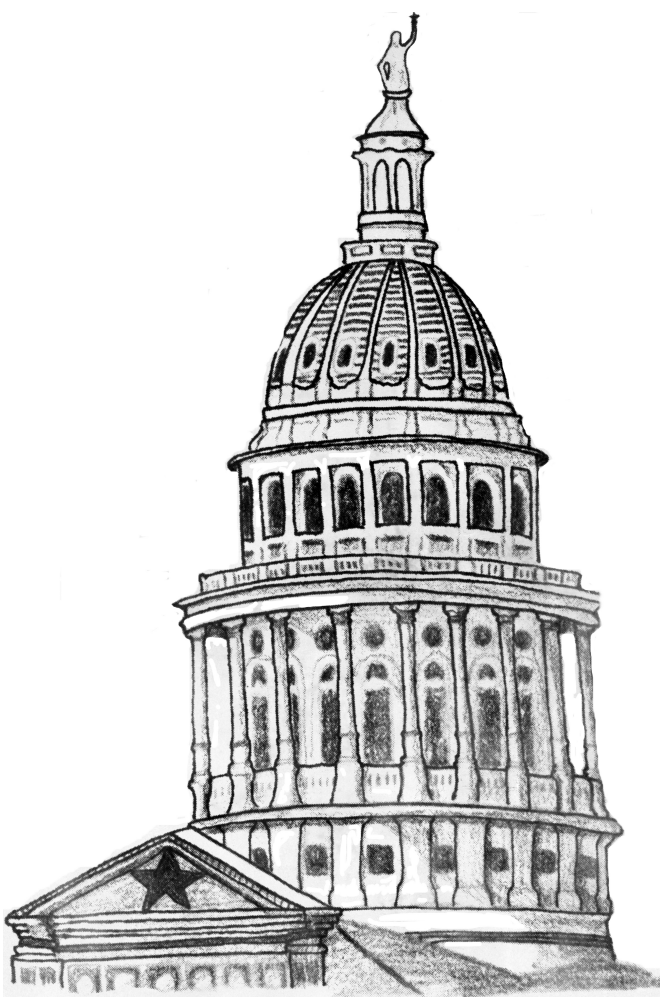
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 14th day of September, 2022.

Greg Abbott, Governor

TRD-202203700

♦ ♦ ♦



THE ATTORNEY GENERAL

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

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

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

Request for Opinions

RQ-0478-KP

Requestor:

Mr. Thomas J. Gleeson

Executive Director

Public Utility Commission of Texas

Post Office Box 13326

Austin, Texas 78711

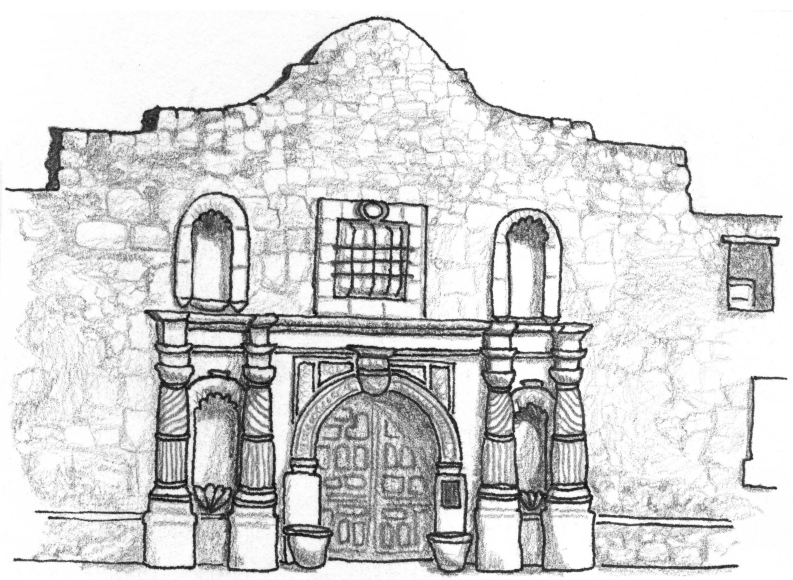
Re: Whether the Public Utility Commission has authority under Water Code section 12.013 to hear an appeal by a municipal utility of rates set by a water control and improvement district, or whether the Texas Commission on Environmental Quality has exclusive authority over such an appeal under Water Code section 51.305(d) (RQ-0478-KP)

Briefs requested by October 10, 2022

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

TRD-202203672
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: September 13, 2022

♦ ♦ ♦



TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Requests/Questions

Whether a corporation subject to section 253.094 of the Texas Election Code may provide pro bono legal services to candidates or political committees in Texas for the purpose of challenging in court the interpretation or constitutionality of a Texas law or regulation subject to the jurisdiction of the Texas Ethics Commission. (AOR-660.)

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800 or opinions@ethics.state.tx.us.

Issued in Austin, Texas, on September 13, 2022.

TRD-202203698
Jim Tinley
Interim General Counsel
Texas Ethics Commission
Filed: September 13, 2022

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Advisory Opinion Requests/Questions

Whether an employee of a university system participates in a procurement or contract negotiation for the purposes of Section 572.069 of the Government Code when the employee informally recommends an attorney to provide outside legal services to the university system decision makers, but has no involvement in the formal selection process or negotiating the terms of the contract. (AOR-665.)

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800 or opinions@ethics.state.tx.us.

Issued in Austin, Texas, on September 13, 2022.

TRD-202203690
Jim Tinley
Interim General Counsel
Texas Ethics Commission
Filed: September 13, 2022

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Advisory Opinion Requests/Questions

Whether candidates for party precinct chair are subject to the campaign treasurer and campaign finance filing requirements of Title 15 of the Texas Election Code. (AOR-667.)

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800 or opinions@ethics.state.tx.us.

Issued in Austin, Texas, on September 13, 2022.

TRD-202203691
Jim Tinley
Interim General Counsel
Texas Ethics Commission
Filed: September 13, 2022

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Advisory Opinion Requests/Questions

Whether a government employee's direct communications with a potential contracting partner over the terms of a prospective deal constitutes participating in a procurement or contract negotiation under Section 572.069 of the Government Code. Whether Section 572.069 of the Government Code prohibits a former employee of a state agency from accepting employment from an affiliate of a person that was involved in procurements or contract negotiations in which the employee participated during his state service. (AOR-668.)

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800 or opinions@ethics.state.tx.us.

Issued in Austin, Texas, on September 13, 2022.

TRD-202203692
Jim Tinley
Interim General Counsel
Texas Ethics Commission
Filed: September 13, 2022

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Advisory Opinion Requests/Questions

Whether a political contribution made to a local candidate or officeholder triggers the two-year lobby waiting period in section 253.007 of the Election Code. Whether a member of the legislature is subject to the two-year lobby waiting period in Section 253.007 if he receives a refund of the contribution that would trigger the waiting period. (AOR-669.)

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800 or opinions@ethics.state.tx.us.

Issued in Austin, Texas, on September 13, 2022.

TRD-202203693
Jim Tinley
Interim General Counsel
Texas Ethics Commission
Filed: September 13, 2022

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Advisory Opinion Requests/Questions

Whether any of the State's revolving door provisions prohibit a former state employee from accepting certain employment. (AOR-670.)

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800 or opinions@ethics.state.tx.us.

TRD-202203694
Jim Tinley
Interim General Counsel
Texas Ethics Commission
Filed: September 13, 2022

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

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

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 11. QUALIFIED ALLOCATION PLAN (QAP)

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 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. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous re-adoption making changes to an existing activity, concerning the allocation of Low Income Housing Tax Credits (LIHTC).

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

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

4. The proposed repeal does not result in an increase in fees paid to the Department or in a decrease in fees paid to the Department.

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

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous adoption of the subchapters in 10 TAC Chapter 11, the Qualified Allocation Plan, in order to better meet the requirements of Tex. Gov't Code §2306.67022.

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

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

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

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

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

The proposed repeal does not contemplate or authorize a 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 proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

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

Mr. Wilkinson has also determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule 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 proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 23, 2022, and October 14, 2022 to receive stakeholder comment on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Matthew Griego, QAP Public Comment, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895, attn: Matthew Griego, QAP Public Comments, or by email to htc.public-comment@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time OCTOBER 7, 2022.

SUBCHAPTER A. PRE-APPLICATION, DEFINITIONS, THRESHOLD REQUIREMENTS AND COMPETITIVE SCORING

10 TAC §§11.1 - 11.10

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

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

§11.1. General.

§11.2. Program Calendar for Housing Tax Credits.

§11.3. Housing De-Concentration Factors.

§11.4. Tax Credit Request, Award Limits and Increase in Eligible Basis.

§11.5. Competitive HTC Set-Asides. (§2306.111(d)).

§11.6. Competitive HTC Allocation Process.

§11.7. Tie Breaker Factors.

§11.8. Pre-Application Requirements (Competitive HTC Only).

§11.9. Competitive HTC Selection Criteria.

§11.10. Third Party Request for Administrative Deficiency for Competitive HTC Applications.

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 September 12, 2022.

TRD-202203638
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 23, 2022
For further information, please call: (512) 475-3959

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SUBCHAPTER B. SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS

10 TAC §11.101

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

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

§11.101. Site and Development Requirements and Restrictions.

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 September 12, 2022.

TRD-202203639
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 23, 2022
For further information, please call: (512) 475-3959

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

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

§11.201. Procedural Requirements for Application Submission.

§11.202. Ineligible Applicants and Applications.

§11.203. Public Notifications (§2306.6705(9)).

§11.204. Required Documentation for Application Submission.

§11.205. Required Third Party Reports.

§11.206. Board Decisions (§§2306.6725(c); 2306.6731; and 42(m)(1)(A)(iv)).

§11.207. Waiver of Rules.

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

Filed with the Office of the Secretary of State on September 12, 2022.

TRD-202203640
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 23, 2022
For further information, please call: (512) 475-3959

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SUBCHAPTER D. UNDERWRITING AND LOAN POLICY

10 TAC §§11.301 - 11.306

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

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

§11.301. General Provisions.

§11.302. Underwriting Rules and Guidelines.

§11.303. Market Analysis Rules and Guidelines.

§11.304. Appraisal Rules and Guidelines.

§11.305. Environmental Site Assessment Rules and Guidelines.

§11.306. Scope and Cost Review Guidelines.

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 September 12, 2022.

TRD-202203641
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 23, 2022
For further information, please call: (512) 475-3959

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SUBCHAPTER E. FEE SCHEDULE, APPEALS, AND OTHER PROVISIONS

10 TAC §§11.901 - 11.907

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

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

§11.901. Fee Schedule.

§11.902. Appeals Process.

§11.903. Adherence to Obligations. (§2306.6720)

§11.904. Alternative Dispute Resolution (ADR) Policy.

§11.905. General Information for Commitments or Determination Notices.

§11.906. Commitment and Determination Notice General Requirements and Required Documentation.

§11.907. Carryover Agreement General Requirements and Required Documentation.

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 September 12, 2022.

TRD-202203642
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 23, 2022
For further information, please call: (512) 475-3959

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SUBCHAPTER F. SUPPLEMENTAL HOUSING TAX CREDITS

10 TAC §§11.1001 - 11.1009

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

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

§11.1001. General.

§11.1002. Program Calendar for Supplemental Housing Tax Credits.

§11.1003. Maximum Supplemental Housing Tax Credits, Requests and Award Limits.

§11.1004. Competitive HTC Set-Asides. (§2306.111(d)).

§11.1005. Supplemental Credit Allocation Process.

§11.1006. Procedural Requirements for Supplemental Credit Application Submission.

§11.1007. Required Documentation for Supplemental Credit Application Submission.

§11.1008. Supplemental Credit Applications Underwriting and Loan Policy.

§11.1009. Supplemental Credit Fee Schedule.

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 September 12, 2022.

TRD-202203643
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 23, 2022
For further information, please call: (512) 475-3959

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CHAPTER 11. QUALIFIED ALLOCATION PLAN (QAP)

"The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 11, Qualified Allocation Plan (QAP). This chapter is comprised of subchapter A, §§11.1- 11.10; subchapter B, §11.101; subchapter C, §§11.201- 11.207; subchapter D, §§11.301- 11.306; subchapter E, §§11.901- 11.907; and subchapter F, §§11.1001- 11.1009. The purpose of the proposed new subchapters is to provide compliance with Tex. Gov't Code §2306.67022 and to update the rules to: clarify multiple definitions and the Administrative Deficiency process; update the Program Calendar; reduce thresholds for Proximity to Jobs so that more potential Development sites will be competitive; increase Eligible building costs to respond to growing expenses; eliminate subjective and difficult to review Neighborhood Risk Factors and Undesirable Site Features; create alternative criteria for obtaining an Experience Certificate; add automatic Supportive Housing and HUD Neighborhood Choice awards for specified regions of the State; and provide for the use of 2023 Competitive Housing Tax Credits to assist 2021 Competitive Housing Tax Credit Applicants negatively impacted by the COVID-19 pandemic."

Texas Gov't Code §2001.0045(b) does not apply to the rule proposed for action 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 proposed rulemaking and the analysis is described below for each category of analysis performed.

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

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

1. The proposed rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, concerning the allocation of Low Income Housing Tax Credits (LIHTC).

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

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

4. The proposed rule changes will result in a decrease in fees paid to the Department in some cases. The Appraisal Review Fee of $1,875 has been eliminated.

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

6. The proposed rule will not limit or repeal an existing regulation, but can be considered to "expand" the existing regulations on this activity because the proposed rule has sought to clarify Application requirements.

Some "expansions" are offset by corresponding "contractions" in the rules, compared to the 2022 QAP. Notably, the Department has sought to remove superfluous language wherever possible and to consolidate rules to reflect current process. These additions, removals, and revisions to the QAP are necessary to ensure compliance with IRC §42, Tex. Gov't Code §2306.67022, and other federal and state law.

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

8. The proposed rule will not negatively 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 proposed rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.67022. 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 proposed 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 proposed 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 HTCs. 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 proposed rule for which the economic impact of the rule is projected to be $0. The proposed 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 proposed 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 proposed 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 section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule for administering the allocation of LIHTC with considerations made for applicants as it relates to the impact of the COVID-19 pandemic on the application process. Other than the fees mentioned in section a4 above, 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 proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the same processes described by the rule have already been in place through the rule found at this section being repealed. If anything, Departmental revenues may increase due to a comparatively higher volume of Applications, which slightly increases the amount of fees TDHCA receives.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 23, 2022, and October 14, 2022 to receive stakeholder comment on the new proposed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Matthew Griego, QAP Public Comment, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895, attn: Matthew Griego, QAP Public Comments, or by email to htc.public-comment@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time October 14, 2022.

SUBCHAPTER A. PRE-APPLICATION, DEFINITIONS, THRESHOLD REQUIREMENTS AND COMPETITIVE SCORING

10 TAC §§11.1 - 11.10

STATUTORY AUTHORITY.

The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

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

§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 and Multifamily Direct Loans. 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.

(1) 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 accurate 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.

(2) Developments with Existing LURAs. Applicants proposing to submit an Application requesting an award of Housing Tax Credits or a Direct Loan for a Development that already has a LURA in place should review the existing LURA(s) on the property to ensure there are no conflicts with the proposed Application. Where an Applicant has identified a potential conflict, it is incumbent upon the Applicant to consult with staff regarding the steps that may be necessary to resolve the conflicts. This may include, but is not limited to, an Application amendment or LURA amendment, a waiver, or other action that may necessitate additional staff time for review or a Board determination. Depending on the timing constraints associated with the proposed Application, Applicants should be mindful that resolving issues relating to the existing LURA and for Direct Loans the existing Contract may not coincide with the timing needed for a new award if such requests are not submitted early in the process. A copy of the existing LURA must be included in the 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 to clarify, explain, confirm, or restrict the Development proposal to a logical and definitive plan or to provide 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 Applicants must intend that the pre-Application or Application is the final version to be reviewed by staff, and should not rely on the Administrative Deficiency process when applying for funding.

(A) The following issues will be treated by Department staff as Administrative Deficiencies that are curable through the Deficiency process only if the issues, when taken as a whole, do not constitute a Material Deficiency as defined in §11.1(d)(79) of this chapter:

(i) For Applications that are substantially complete, a minor quantity of missing signatures, documents, or similar clerical matters, the curing of which will not create change within the Application, unless the missing documentation is required to have existed as of the appropriate deadline and did not, or is otherwise not susceptible to resolution. For Competitive HTC or Direct Loan Applications, this may include documents submitted to substantiate points claimed in the Application only if:

(I) The documents can be readily identified to have existed prior to the Full Application Delivery Date (Competitive HTC) or the Application Acceptance Date (Direct Loan), and the submission of the documents does not necessitate additional changes in the Application to qualify for the points; or

(II) For scoring items that are predicated solely on third-party data, characteristics inherent to the proposed Development Site, or are otherwise not influenced by the actions of the Applicant, the Application's eligibility for these points can be clearly established to have existed prior to the Full Application Delivery Date (Competitive HTC) or the Application Acceptance Date (Direct Loan), and the submission of the documents does not necessitate additional changes in the Application to qualify for the points.

(ii) Inconsistencies that exist between facts presented in the Application and/or its supporting documentation. A discrepancy between the requested points and the points supported by the Application will not be treated as an inconsistency if the facts presented within the Application are otherwise consistent.

(iii) At the Department's sole discretion, additional information that is necessary to assist in the review of the Application.

(B) The following issues will not be treated by Department staff as Administrative Deficiencies that are curable through the Deficiency process:

(i) Any matter that will materially change the Application, except for matters that must be addressed in accordance with 10 TAC §11.1(d)(2), in which case staff will direct the Applicant to resolve the inconsistency in the manner that creates the least change within the Application. Under no circumstance can the resolution of an Administrative Deficiency increase the Application's score from what was initially requested.

(ii) Changes to the Application that are submitted only to qualify for points claimed in the Application.

(C) In all cases, 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 Department Staff and Board.

(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--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-contained 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 a 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, the Determination Notice date for a Tax-Exempt Bond Development issued by the Department, Cost Certification for Tax-Exempt Bond Developments where the Determination Notice is issued administratively, 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), HOME American Rescue Plan (HOME-ARP), Tax Credit Assistance Program Repayment Funds (TCAP RF), Texas Housing Trust Fund (THTF), or other programs 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), the NOFA under which they are awarded, the Contract, and 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 leasor 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 leasors, 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 may be considered 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) Owner--See Development Owner.

(90) Person--Without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability 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.

(91) 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.

(92) Physical Needs Assessment--See Scope and Cost Review.

(93) 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.

(94) *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.

(95) 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.

(96) Preservation--Activities that extend the Affordability Period for rent-restricted Developments that are at risk of losing low-income use restrictions or subsidies.

(97) 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.

(98) Primary Market Area (PMA)--See Primary Market.

(99) 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.

(100) 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.

(101) 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.

(102) Qualified Census Tract (QCT)--those tracts designated as such by the U.S. Department of Housing and Urban Development.

(103) 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.

(104) 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).

(105) Qualified Contract Request (Request)--A request containing all information and items required by the Department relating to a Qualified Contract.

(106) Qualified Entity--Any entity permitted under Code, §42(i)(7)(A) and any entity controlled by such a qualified entity.

(107) 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.

(108) 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.

(109) 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.

(110) 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.

(111) 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.

(112) Report--See Underwriting Report.

(113) Request--See Qualified Contract Request.

(114) 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.

(115) 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.

(116) 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.

(117) 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.

(118) 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.

(119) 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.

(120) 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.

(121) Site Work--Materials and labor for the horizontal construction generally including excavation, grading, paving, underground utilities, and site amenities.

(122) 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.

(123) 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.

(124) Supplemental Credits--2022 Housing Tax Credits awarded through Subchapter F of this chapter to assist 2019 and 2020 Competitive Housing Tax Credit Developments.

(125) 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 Acceptance 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. 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) - (VI) 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.

(126) 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.

(127) 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).

(128) *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.

(129) 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 website (www.tdhca.state.tx.us).

(130) 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.

(131) 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.

(132) 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.

(133) Underwriter--The author(s) of the Underwriting Report.

(134) 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.

(135) 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.

(136) Uniform Physical Condition Standards (UPCS)--As developed by the Real Estate Assessment Center of HUD.

(137) 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.

(138) Unit Type--Units will be considered different Unit Types if there is any variation in the number of Bedrooms, bathrooms,

features, or a square footage difference equal to or more than 120 square feet.

(139) U.S. Department of Agriculture (USDA)--Texas Rural Development Office (TRDO) serving the State of Texas.

(140) 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.

(141) 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.

(142) 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 in paragraph (116)(A) of this subsection, definition of Rural Area. 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.

(143) 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).

(144) 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 2020 Census boundaries will continue to be used. All references to census tracts throughout this chapter will mean the 2020 Census tracts, unless otherwise noted. Applicants may need to provide Census tract information based on the 2020 boundaries as well as the ones defined by pre-2020 ACS data, if such information is needed for scoring. 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 2023 QCTs designated by HUD in September 2022, to be effective in 2023.

(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) Scattered Site Applications. As it relates to calculating any distances (tie determinations, proximity to features, etc.) or determining satisfaction of scoring, the site which scores or ranks the lowest will be the site used for that analysis. There is no opportunity for higher scoring or performing sites to elevate the score or performance of other sites in the scattered site Application.

(j) 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.

(k) 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 (FHAST) 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.

(l) 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. Graphic 1

(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 including the Application Acceptance Date 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 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 2023 credits will be the one considered eligible, and the other Applications will not be reviewed; if there is no Supplemental Allocation of 2023 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 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 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 designated, elevated value not to exceed $2.00 for every $1.00 Supplemental Allocation awarded when calculating the $3 million maximum for all 2023 Applications, with this elevated value to be determined by the Department no later than December 1, 2022. 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 2023 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 2023 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) or for Rural areas located in a Difficult Development Area (DDA) that has high construction, land and utility costs relative to the AMGI. The Application must include the SADDA or DDA map that clearly shows the proposed Development is located within the boundaries of a SADDA or DDA as applicable.

(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, non-metro DDA 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, non-metro DDA 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, non-metro DDA or SADDA designation is not effective may be underwritten to include the 30% boost, provided a complete application was submitted to the bond issuer in the year the QCT, non-metro DDA or SADDA designation was 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 Cri-

teria 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 2023 ceiling will be attributed to the 2023 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 2023 ceiling will be attributed to the 2023 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 subregion 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 2023 ceiling will be attributed to the 2023 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 (1 2 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);

(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.

(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 with the priorities in this subparagraph first prioritized. 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. In Urban subregions in which credits available do not allow for all of the priorities in clauses (iii) to (v) of this subparagraph to be achieved, the priorities will be followed in the order reflected in this subparagraph.

(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 2023 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.

(iii) In Urban subregions, not including the calculation of At-Risk Applications awarded, no more than 50% of all credits in a subregion will be awarded to Applications proposing Rehabilitation or Reconstruction, unless only Rehabilitation or Reconstruction Applicants are eligible in the subregion.

(iv) In Urban subregions containing a county with a population that exceeds 950,000, the Board shall allocate competitive tax credits to the highest scoring Development, if any, that is located in a neighborhood which is a recipient of a HUD Choice Neighborhood Planning or Implementation grant in the preceding five years from the date of Application submission and funds from the HUD Choice Neighborhood awardee are reflected in the Application's Sources and Uses.

(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 2023 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 2023 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 percentages 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 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 a 20% poverty rate threshold in all regions except for Regions 11 and 13(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 15 or fewer years ago. Years are measured in whole years, and are calculated by deducting the year of the award from the "Board Approval" column of the property inventory from the Site Demographics Characteristics report from the current year. The specific month and date of the award are disregarded for this analysis. 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 Applications, 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 or contains 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;

(I) The name and address of the nearest Housing Tax Credit assisted Development that serves the same Target Population and was awarded 15 or fewer years ago following the calculation established in 10 TAC §11.7(2) according to the Department's property inventory tab of the Site Demographic Characteristics Report; and

(J) If points are to be claimed related to Underserved Area and/or Proximity to Jobs, documentation supporting those point elections.

(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 10. 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. Applications will only be reviewed for point items specifically elected in the Application. Except for scoring items that are awarded based on tiered categories, if an Application is determined to not qualify for the points elected, Department staff will not evaluate the Application to determine whether it might qualify for alternative points.

(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 (500) square feet for an Efficiency Unit;

(ii) six-hundred (600) 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 or officer of the HUB cannot be a Related Party to or Affiliate, including the spouse, of any other Principal or officer of the Applicant, Developer or Guarantor (excluding another Principal of said HUB), regardless of Control. (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. Nonprofit organizations that formally operate under a parent organization may assign Control of the Development to that parent organization, so long as it meets the requirements of IRC §42(h)(5)(C).

(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) 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. The Units identified for this scoring item may not be the same Units identified previously for the Section 811 PRA Program.

(A) The Development must commit at least 5% of the total Units to Persons with Special Housing Needs. 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 referred 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. A Developments is not eligible under this paragraph unless points have also been selected under subparagraph (A) of this paragraph. (1 point)

(C) If at Application, 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)

(5) 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. Based on the American Community Survey (ACS) data, 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 less than 20% or the median poverty rate among tracts for the region, whichever is greater, 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

(I) a poverty rate less than 20% or the median poverty rate among Census tracts for the region whichever is greater; and

(II) a median household income in the two highest quartiles among Census tracts within the uniform service region (2 points); or

(ii) The Development Site is located entirely within a census tract that has:

(I) a poverty rate less than 20% or the median poverty rate among Census tracts for the region, whichever is greater,

(II) a median household income in the third quartile among Census tracts within the region, and

(III) is contiguous to a census tract that is in the first or second quartile among tracts for median household income in the region, and has a poverty rate less than 20% or the median poverty rate among tracts for the region, whichever is greater, and the Development Site is no more than 2 miles from the boundary between the census tracts For purposes of this scoring item, a highway is a limited-access road with a speed limit of 50 miles per hour or more; (1 point). 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. (2 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. (2 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 27% or more of adults age 25 and older has an Associate's Degree or higher as tabulated by the 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. (2 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. (2 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 27% or more of adults age 25 and older has an Associate's Degree or higher as tabulated by the American Community Survey 5-year Estimate. (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).

(6) Underserved Area. (§§2306.6725(a)(4) and (b)(2); 2306.127(3), 42(m)(1)(C)(i) and (ii)). Points are not cumulative and an Applicant is therefore limited to selecting one subparagraph. If an Application qualifies for points under paragraph (5) of this subsection, then the Application is not eligible for points under subparagraphs (A) and (B) of this paragraph. Years are measured in whole years, and are calculated by deducting the year of the award from the "Board Approval" column of the property inventory of the Site Demographic Characteristics Report from the current year. The specific month and date of the award are disregarded for this analysis. 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) (§2306.127(3)). 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 (5 points);

(B) (§2306.127(3)). 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) (§2306.6725(b)(2)). The Development Site is located entirely within a census tract that does not have another Development that was awarded 30 or fewer 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 15 or fewer 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 10 or fewer 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 that is located wholly within the perimeter formed by the outermost boundaries of an incorporated area and the census tract itself and all of its contiguous census tracts do not have another Development that was awarded 10 or fewer years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report. This item will apply to Development Sites located entirely in in Places with a population of 100,000 or more, and will not apply in the At-Risk Set-Aside; (5 points)

(i) The presence of unincorporated enclaves within the census tract will not make an Application ineligible for these points so long as the tract is wholly within the outer boundaries of an incorporated area.

(ii) The perimeter of incorporated area may be composed of boundaries from multiple municipalities so long as the boundaries, when taken as a whole, form a complete perimeter.

(iii) The Development Site may intersect the boundaries of multiple Places so long as each has a population of 100,000 or more.

(iii) To accommodate for mapping inaccuracies, for purposes of this scoring item only, any overlap of boundaries that is 300 or fewer feet, measured outward from the incorporated area boundary, will be disregarded when determining that a census tract is located within an incorporated area so long as the determination is in the Application's favor.

(iv) Contiguous census tracts include those that touch at a point.

(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. The Census Tracts for this scoring item will be those defined by the ACS 2012 and 2019 5-year data sets. Due to changing census tracts resulting from the 2020 decennial census, Development sites which would have qualified for this point item under the 2022 QAP using the 2022 Site Demographics Report will continue to be eligible. The Department will not publish an updated Affordable Housing Needs Indicator analysis until sufficient data is available to do so. It is incumbent upon the Applicant to demonstrate within the Application that the Development Site would have qualified for these points. (4 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).

(7) Proximity to Job Areas. (§42(m)(1)(C)(i)) An Application may qualify to receive up to four (4) points if the Development Site is located in one of the areas described in subparagraphs (A), (B), or (C) 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. This determination will be based on the latest data set posted to the US Census website on or before October 1, 2022. 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 in Urban subregions 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 10,000 jobs. (4 points)

(ii) The Development is located within 2 miles of 8,000 jobs. (3 points)

(iii) The Development is located within 2 miles of 6,500 jobs. (2 points)

(iv) The Development is located within 2 miles of 4,500 jobs. (1 points)

(B) Proximity to Jobs. For Development Sites in Rural subregions 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 8,000 jobs. (4 points)

(ii) The Development is located within 4 miles of 6,000 jobs. (3 points)

(iii) The Development is located within 4 miles of 4,000 jobs. (2 points)

(iv) The Development is located within 4 miles of 2,000 jobs. (1 points)

(C) Access to Jobs. A Development site which qualifies for at least 2 points under subparagraph (A) or (B) may qualify for points under this subparagraph if the Development Site is located on a route, with an accessible path for pedestrians, that is within one half-mile from the entrance of a public transportation stop or station with a route schedule that provides regularly scheduled service to employment and basic services. (2 points)

(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, 2023. 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 Government 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 subparagraph B(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 supporting 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 form 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, unless allowable exceptions provided for in §11.302(i)(5) are applicable. 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)(126)(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. The Department will annually compare the proportional cost increases from October of the prior year to October of the year being calculated based on the Construction Price Index for Multifamily Housing Units Under Construction (US Census Bureau) and increase the square foot cost targets in this item by that annual proportional amount of increase.

(A) 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 or equal to $134 per square foot; or

(ii) the voluntary Eligible Hard Cost per square foot is less than or equal to $179 per square foot.

(B) 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 or equal to $143 per square foot; or

(ii) the voluntary Eligible Hard Cost per square foot is less than or equal to $188 per square foot.

(C) 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 or equal to $179 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 or equal to $232 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 or equal to $232 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; and

(G) 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 a selected term but no earlier than the end of the Compliance Period and no later than ther Extended Use 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 selected term. If a Development is layered with National Housing Trust Funds, HOME-ARP, or another MFDL source where homeownership is not an eligible activity, the right of first refusal may not be earlier than the end of the Federal Affordability Period. §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, 2022. (1 point)

(9) Readiness to proceed Applications that include a certification that all financing will be closed and the construction contract will be fully executed on or before the last business day of November or as otherwise permitted under subparagraph (C) of this paragraph. (1 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 10 TAC §11.9(g), as determined solely by the Board.

(C) Applications that remain on the waiting list after awards are made in late July that ultimately receive an award will receive an extension of the November deadline equivalent to the period of time between the late July meeting and the date that the Commitment Notice for the Application is issued.

(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 paragraph (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).

(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 proposal and found it to be within the state agency's legal authority to adopt.

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Bobby Wilkinsin
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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SUBCHAPTER B. SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS

10 TAC §11.101

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

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

§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, HOME-ARP, or NSP 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) and Developments encumbered by a TDHCA LURA the earlier of the first day of the Application Acceptance Period for HTC, Application Acceptance Date for Direct Loan, or date the pre-application is submitted (if applicable) 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(e)(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 (K) of this paragraph, staff may issue a Deficiency. If staff identifies an undesirable site feature reflected in subparagraphs (A) - (J) of this paragraph and it was not disclosed the Application will be terminated. An Applicant's failure to disclose an Undesirable Site Feature is not curable by Administrative 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 Applicant 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 an Administrative Deficiency or re-evaluation. 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 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;

(E) 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);

(F) Development Sites located within 10 miles of a nuclear plant;

(G) Development Sites in which the buildings are located within the accident potential zones or the runway clear zones of any airport;

(H) 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);

(I) Development Sites located within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily;

(J) 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

(K) 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 staff may issue an Administrative 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, the Application will be terminated. Applicant's failure to disclose a Neighborhood Risk Factor is not curable by Administrative Deficiency. 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) - (iii) 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). Rehabilitation Developments are exempt from this Neighborhood Risk Factor.

(ii) The Development Site is New Construction or Reconstruction and 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. Rehabilitation developments are exempt from this Neighborhood Risk Factor.

(iii) 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 "Not Rated: Senate Bill 1365" for 2022. 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 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) and (iii) 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. 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 "Not Rated: Senate Bill 1365" for 2022, 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)(iii) 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.

(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 may 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.

(iii) Evidence of mitigation for each of the schools in the attendance zone that has a TEA Accountability Rating of "Not Rated: Senate Bill 1365" for 2022 must meet the requirements of subclauses (I) and (II) of this clause which will be a requirement of the LURA for the duration of the Affordability Period and cannot be used to count for purposes of meeting the threshold requirements under subparagraph (7)(B)(ii) of this paragraph.

(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 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, organized, 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 walk 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;

(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; or

(vii) any New Construction, Reconstruction, or Adaptive Reuse Development proposing more than 30% efficiency and/or one-Bedroom Units. This requirement will not apply to Elderly or Supportive Housing Developments.

(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 New Construction, Reconstruction, or Adaptive Reuse Elderly Development (including Elderly in a Rural Area) proposing more than 70% two-Bedroom Units.

(C) Ineligibility of Developments within Certain School Attendance Zones. Due to uncertainty linked to the COVID-19 pandemic, this item is suspended. 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. If the Board grants an Appeal of staff's determination of Site eligibility, the Board shall document the reasons for a determination of eligibility.

(D) Ineligibility of Developments within Areas of High Crime. Any Development involving New Construction or Adaptive Reuse located in an area described in (a)(3)(B)(ii) of this subsection and for which mitigation submitted under subparagraph (D)(ii) of this paragraph still yields a Part I violent crime rate greater than 18 per 1,000 persons (annually) is ineligible with no opportunity for mitigation. If the Board grants an Appeal of staff's determination of Site eligibility, the Board shall document the reasons for a determination of eligibility.

(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 or equal to 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) - (O) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (D) - (O) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), (H) or (N) 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 (not required for USDA);

(F) Energy-Star or equivalently rated dishwasher; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit;

(G) Energy-Star or equivalently rated refrigerator;

(H) Oven/Range;

(I) Blinds or window coverings for all windows;

(J) At least one Energy-Star or equivalently rated ceiling fan per Unit;

(K) Energy-Star or equivalently rated lighting in all Units;

(L) All areas of the Unit (excluding exterior storage space on an outdoor patio/balcony) must have heating and air-conditioning;

(M) Adequate parking spaces consistent with local code including a waiver or variance thereof, 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;

(N) 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

(O) 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 two (2) points;

(ii) Developments with 41 to 76 Units must qualify for four (4) points;

(iii) Developments with 77 to 99 Units must qualify for seven (7) points;

(iv) Developments with 100 to 149 Units must qualify for ten (10) points;

(v) Developments with 150 to 199 Units must qualify for fourteen (14) points; or

(vi) Developments with 200 or more Units must qualify for eighteen (18) 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. Applications that would have been classified as ineligible based on their location within certain school attendance zones as provided for in subparagraph (1)(C) of this paragraph will not be considered ineligible if they offer the Pre-K services described in this item on the property, which will be reflected in the LURA. To receive the points or to qualify for the mitigation, 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 (5 points).

(VIII) Splash pad/water feature play area (3 point).

(IX) Sport Court or field (including, but not limited to, Tennis, Basketball, Volleyball, Pickleball, 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) (2 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) Community laundry room with at least one washer and dryer for every 40 Units (2 points).

(II) 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).

(III) 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).

(IV) Furnished Community room (2 points).

(V) Library with an accessible sitting area (separate from the community room) (1 point).

(VI) Activity Room stocked with supplies (Arts and Crafts, board games, etc.) (2 points).

(VII) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points).

(VIII) 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).

(IX) 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).

(X) High-speed Wi-Fi with advanced telecommunications capacity as determined under 47 U.S.C. 1302 with coverage throughout the Development (2 points).

(XI) 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).

(XII) 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).

(XIII) Recycling Service (includes providing a storage location and service for pick-up) (1 point).

(XIV) Community car vacuum station (1 point).

(XV) Access to onsite bike sharing services, provided tenants have short-term, autonomous access to community-owned bicycles, with at least one bicycle per 25 Units (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) four hundred fifty (450) square feet for an Efficiency Unit;

(ii) five hundred fifty (550) 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);

(IX) A rainwater harvesting/collection system or locally approved greywater collection system (0.5 points);

(X) Wi-Fi enabled, Energy-Star or equivalently rated "smart" thermostats installed in all units (1 point); and

(XI) Solar panels installed, with at least four panels with a rated power output of at least 300 watts for each Low-Income Unit. (2 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 substantiate 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. exercises 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. However, a single story Unit may be substituted for a townhome Unit, if the single story Unit contains the same number of Bedrooms and bathrooms and has an equal or greater square footage.

(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 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 September 12, 2022.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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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 proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

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

§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. If an Applicant can view the files that were uploaded, then that shall serve as an indication that the Application was uploaded and received by the Department. Staff, may, as a courtesy, confirm that the Application files were uploaded, but shall not be obligated or required to confirm such submission. 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 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. Regardless of the timing associated with notification by the TBRB that an application is next in line to receive a Certificate of Reservation and the corresponding deadline to submit the Application pursuant to 10 TAC §190.3(b)(13), it is the Department's expectation that the requirements in this chapter are adhered to, and that care and attention are given to the compilation of the Application, or the Application may be terminated.

(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. Upon notification from TBRB that an potential Applicant is next in line to receive a Reservation 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 or Applications Not Successful in Lottery.

(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. If the Third Party Reports are submitted on a date other than the fifth of the month, it will be at staff's discretion as to which Board meeting the Application will be presented, or what will be the target date for the administrative issuance of the Determination Notice, as applicable. 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.

(C) Generally, 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. In instances where an Application necessitates more staff time to review than normal, where an Application is suspended due to the inability to resolve Administrative Deficiencies by the original deadline, or an extension to respond to an Administrative Deficiency is requested, staff is not obligated to ensure the Application meets the original target date for a Board Meeting or administrative issuance of a Determination Notice, as applicable. 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) Competitive 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. 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. The deficiency process does not require staff to request information from the Applicant in order to complete the Application. 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. 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 Department staff 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, suspension, 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 terminated, 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.

(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 transaction, 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 Department), 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 generally 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 specifically 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 and will specifically market to the public housing authority (PHA) waitlists for any PHA in the city and/or county the Development is located within and the PHA of any City within 5 miles of the Development. The Development Owner will be required to identify how they will specifically market to veterans and the PHA waiting lists and report to the Department in the annual housing report on the results of the marketing efforts to veterans and PHA waiting lists. 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 2014-2022, 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 a minimum of 150 units or, or a Person, who was included on the original Owner or Developer organization chart for at least 10 awarded Competitive HTC Applications and/or Tax-Exempt Bond Developments in Texas, which all placed in service timely Applicants requesting Multifamily Direct Loan funds only may meet the alternative requirement at §13.5(h)(1) of this title (relating to Experience). 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) be current, non-expired, and 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 nonprofit 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 (or longer, if required by the NOFA), in the form provided by the Department. Any "other" debt service included in the pro forma must include a description. For Tax-Exempt Bond Developments, the pro forma must be signed by the lender and syndicator.

(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 for the duration of the Affordability Period and for Tax-Exempt Bond Developments, in accordance with the Applicant's election under Tex. Gov't Code §1372.0321. 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 or as specifically allowed in a NOFA;

(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;

(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;

(VI) in which HOME-ARP is the anticipated fund source, during the State Affordability Period have at least 20% of the Direct Loan-restricted Units for households and families whose incomes do not exceed 60% of the Area Median Income and 100% of the Direct Loan-restricted Units for households and families whose incomes do not exceed 80% 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. For Applications that include a scope of work that contains a combination of new construction and rehabilitation activities, the Application must include a separate development cost schedule exhibit for only the costs attributed to the portion of rehabilitation activities.

(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 $20,000 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 URA 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. This requirement does not apply to a Development Site located entirely in the unincorporated area of a county, and not within the ETJ of a municipality.

(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 may 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 Application Acceptance Date for Direct Loan Applications, or the first day of the Application Acceptance Period for Competitive HTC Applications and must be accompanied by the original Market Analysis.

(A) For Acquisition/Rehabilitation or Reconstruction projects that meet the following criteria, a comprehensive market study as outlined in IRS Section 42(m)(1)(A)(iii) shall mean a location map and a written statement by a disinterested Qualified Market Analyst certifying that the project meets these criteria:

(i) All of the Units in the project contain existing project based rental assistance that will continue for at least the Compliance Period, an existing Department LURA, or the subject rents are at or below 50% AMGI rents;

(ii) The Units are at least 80% occupied at time of Application; and

(iii) Existing tenants have a leasing preference or right to return to the Development as stated in a relocation plan.

(B) 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.

(C) 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))(D). 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 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. The Appraisal must not be dated more than six months prior to the date of Application submission, the Application Acceptance Date for Direct Loan Applications, 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 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 September 12, 2022.

TRD-202203646
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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SUBCHAPTER D. UNDERWRITING AND LOAN POLICY

10 TAC §§11.301 - 11.306

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

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

§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 Notices 15-11 and 21-10 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 80% AMI.

(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 uses a normalized vacancy rate of 7.5% (5% vacancy plus 2.5% for collection loss). 100% project-based rental subsidy developments (not including employee-occupied units) may be underwritten at a combined 5% vacancy 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. If the term sheet has an expiration date, the term sheet must have been signed by the Applicant prior to the expiration date; 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; 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 Insurance 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, Acquisition and Rehabilitation, Reconstruction, and Adaptive Reuse Acquisition.

(i) For a non-identity of interest acquisition with no building acquisition cost in basis or when the acquisition is not part of the Direct Loan eligible cost and not subject to the appraisal requirements in the Uniform Relocation Assistance and Act of 1970, 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 or when required by the Uniform Relocation Assistance and Acquisition Act of 1970 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 as of the first date of the Application Acceptance Period or the Application Acceptance Date for Direct Loans; 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 value ascribed to the proposed Development Site will be prorated based on acreage from the total cost reflected in the Site Control document(s) or the appraisal, if an appraisal is required. An appraisal containing segregated values for the total acreage to be acquired, the acreage for the Development Site and the remainder acreage may be used by the Underwriter in making a proration determination based on relative value. The Underwriter will not utilize a prorated value greater than the total amount in the Site Control document(s).

(B) USDA Rehabilitation Developments. The underwritten acquisition cost for developments financed by USDA will be the transfer value approved by USDA.

(C) 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 an appraisal that meets the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines). If the acquisition cost in the Site Control documents is less than the appraised value, Underwriter will utilize the land value from the appraisal and adjust the building acquisition cost accordingly.

(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. Any General Contractor fees above this limit will be excluded from Total Housing Development Costs. 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 deposit of up to $1,000 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 verify the 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, including a Supportive Housing Development, 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)(125)(E)(i) of this chapter (relating to the Definition of Supportive Housing) and there is an executed guaranty agreement, 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 the overall demand conclusion for the proposed Development. 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.

(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. For HOME-ARP, demand for Qualifying Populations must be identified in accordance with Section VI B.10.a.ii of CPD Notice 21-10. 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. For HOME-ARP, Units for Qualified Populations will be underwritten at $0 income, unless the Unit has project-based rental as-

sistance or subsidy, or is supported by a capitalized operating reserve agreement.

(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 previously approved Developments in the PMA that have no achieved 90% occupancy for a minimum of 90 days. Approved Developments should be determined by:

(I) the HTC Property Inventory that is published on the Department's website as of December 31, 2022, for competitive housing tax credit Applications;

(II) the most recent HTC Property Inventory that is published on the Department's website one month prior to the Application date of non-competitive housing tax credit and Direct Loan Applications.

(iii) 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) If an appraisal is required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the appraisal must also meet the requirements of 49 CFR Part 24 and HUD Handbook 1378. (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.

(b) Appraiser Qualifications. The appraiser must be appropriately certified or licensed by the Texas Appraiser Licensing and Certification Board.

(c) 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 number(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.

(d) 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 (does not include liquified petroleum gas containers with a capacity of less than 125 gallons on-site or within 0.25 miles 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 or any subsequent standards as published).

(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, or any subsequent standards as published)" 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 Developments 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 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 September 12, 2022.

TRD-202203647
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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SUBCHAPTER E. FEE SCHEDULE, APPEALS, AND OTHER PROVISIONS

10 TAC §§11.901 - 11.907

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

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

§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 considered 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 subse-

quent 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 during the Federal Affordability Period.

(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. Ownership Transfer fees are not required for Direct Loan only Developments during the Federal Affordability Period.

(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 after Project completion. 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.

§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 Applicant in the form of a corporate resolution which indicates the sub-entity in Control consistent with the entity contemplated and described in the Application.

(4) Evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan.

(5) Evidence of satisfaction of any conditions identified in the Credit Underwriting Analysis Report, any conditions from the Executive Award Review and Advisory Committee as provided for in 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 subsection (h)(1) - (5) of 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 proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER F. SUPPLEMENTAL HOUSING TAX CREDITS

10 TAC §11.1001 - 11.1009

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

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

§11.1001. General.

(a) This subchapter applies only to 2023 Housing Tax Credits (HTC) requested to supplement Competitive HTC awards from the 2021 ceilings, hereinafter referred to as Supplemental Credits. Applications receiving 2023 credits as part of the regular 2023 Housing Credit Cycle are not subject to the policies in this subchapter. Applicants with 2018,2019, and 2020 allocations that received Force Majeure treatment in 2021 are prohibited from requesting Supplemental allocations, as are 2022 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 2023 HTC Competitive Cycle nor are they part of the 2023 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 (§§11.9(e)(2) and (4) of this title, respectively).

(f) Developments that have Placed in Service are not eligible to receive Supplemental Credits. Applications awarded in 2021 that have already closed their financing, Applications requesting or being awarded Multifamily Development Loans, and Applications originally funded in 2021 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) Applications for which a request for Supplemental Credits is submitted will not be eligible to receive an allocation from the 2023 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. The limit on Supplemental Credit requests will be announced by the Department no later than December 1, 2022, but will not exceed 15% of the original allocation for each Application that requests Supplemental Credits. The final limit on Supplemental requests may be lower than 15% of the 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 Cost Certification 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, at Cost Certification, the credit allocation will be adjusted so that the Development is not over sourced, as determined by the Department.

§11.1004. Competitive HTC Set-Asides. (§2306.111(d)).

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 2021 will be considered to meet the set-aside requirements for that same set-aside in 2023. Supplemental Credits issued by the Board will be attributed to each 2023 Set-aside for the 2023 Application round as appropriate (for instance, for a 2021 development awarded out of the 2021 Non-Profit Set-Aside, now receiving $100,000 in Supplemental Credits, $100,000 would be attributed to the 2023 Non-Profit Set-Aside).

§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 (relating to Program Calendar for Supplemental Housing Tax Credits) 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) 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 Supplement 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 (relating to Amendments and Extensions).

(3) Financing Requirements. If the Development also has Multifamily Direct Loan Funding from the Department that has not closed by the deadline to submit the Notice to Intent for Supplemental Allocations, the request 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 2022 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 let-

ter 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.

(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.

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 proposal and found it to be within the state agency's legal authority to adopt.

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 59. CONTINUING EDUCATION REQUIREMENTS

16 TAC §59.3

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 59, §59.3, regarding Continuing Education Requirements. These proposed changes are referred to as "proposed rule."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 59, implement Texas Occupations Code, Chapter 51, Texas Department of Licensing and Regulation.

The proposed rule is necessary to implement House Bill (HB) 1560, 87th Legislature, Regular Session (2021). Article 2 of HB 1560 removed the requirement for polygraph examiners to hold a license. Article 3 of HB 1560 consolidated the licensing and regulation of barbering and cosmetology into a single program administered under Texas Occupations Code, Chapter 1603. The proposed rule also implements Senate Bill (SB) 2065, Article 14, 85th Legislature, Regular Session (2017), which removed the requirement for booting operators to hold a license. The proposed rule modifies the list of occupations which are subject to the continuing education requirements of 16 TAC, Chapter 59, by removing booting operators and polygraph examiners and adding barbers.

SECTION-BY-SECTION SUMMARY

The proposed rule amends §59.3, Purpose and Applicability, by removing current subdivision (3) to remove booting operators from the list of professions that are subject to Chapter 59; relabeling current subdivision (4) to become new subdivision (3) and amending its language to add barbers to the list of professions that are subject to Chapter 59 and update references to statute; removing current subdivision (7) to remove polygraph examiners from the list of professions that are subject to Chapter 59; and renumbering the remaining subdivisions accordingly.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

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

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

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

Mr. Couvillon has determined that for each year of the first five years the proposed rule is in effect, there will be an estimated loss in revenue to state government in the amount of $1,600 per year. This is a result of the loss of registration fees and course approval fees that will no longer be paid by providers of continuing education for polygraph examiners, who are no longer required to hold a license.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed rule is in effect, the public benefit will be the quality of continuing education courses provided to barber licensees by providers who must comply with the registrations and course approval requirements of Chapter 59.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rule is in effect, there will be additional costs to persons who are required to comply with the proposed rule. Any entity that chooses to offer barber continuing education courses will have to pay the provider application fee of $200, if the entity does not already have a provider registration, and the course approval fee of $100 for any course submitted by the entity for approval.

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

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule. Any small business or micro-business that chooses to offer barber continuing education courses will have to pay the provider application fee of $200, if they do not already have a provider registration, and the course approval fee of $100 for any course submitted for approval. However, payment of these fees is a limited expense that will not result in an adverse economic effect for those businesses. Because the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rule does not create or eliminate a government program.

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

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

4. The proposed rule requires an increase or decrease in fees paid to the agency. The proposed rule requires a decrease in fees paid to the Department by removing booting operators and polygraph examiners from the list of professions for which continuing education providers must pay registration fees and course approval fees to the Department.

5. The proposed rule does not create a new regulation.

6. The proposed rule expands, limits, or repeals an existing regulation. The proposed rule expands an existing regulation by adding barbers to the programs that have continuing education provider and course requirements. The proposed rule limits an existing regulation by removing booting operators and polygraph examiners from the programs that have continuing education provider and course requirements.

7. The proposed rule increases or decreases the number of individuals subject to the rules' applicability. The proposed rule decreases the number of individuals subject to the rule's applicability by removing booting operator and polygraph examiner continuing education providers from the rules.

8. The proposed rule does not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rule, and the proposed rule does 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 rule does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

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

STATUTORY AUTHORITY

The proposed rule is proposed under Texas Occupations Code, Chapters 51 and 1603, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rule is those set forth in Texas Occupations Code, Chapters 51 and 1603. No other statutes, articles, or codes are affected by the proposed rule.

§59.3. Purpose and Applicability.

These rules are promulgated to establish continuing education provider and course requirements for the following occupations regulated by the Department of Licensing and Regulation:

(1) Air conditioning and refrigeration contractors, as provided by Texas Occupations Code, Chapter 1302. Additional continuing education requirements relating to air conditioning and refrigeration contractors may be found in Chapter 75 of this title.

(2) Auctioneers, as provided by Texas Occupations Code, Chapter 1802. Additional continuing education requirements relating to auctioneers may be found in Chapter 67 of this title.

~~[(3) Booting operators, as provided by Texas Occupations Code, Chapter 2308. Additional continuing education requirement relating to booting may be found in Chapter 89 of this title.]~~

(3) [~~(4)~~] Barbers and Cosmetologists, as provided by Texas Occupations Code, Chapter [~~Chapters 1602 and~~] 1603. Additional con-

tinuing education requirements relating to barbers and cosmetologists may be found in Chapter 83 of this title.

(4) [~~(5)~~] Electricians, as provided by Texas Occupations Code, Chapter 1305. Additional continuing education requirements relating to electricians may be found in Chapter 73 of this title.

(5) [~~(6)~~] Elevator contractor responsible party and registered elevator inspector, as provided by Texas Health and Safety Code, Chapter 754, Subchapter B. Additional continuing education requirements relating to responsible parties may be found in Chapter 74 of this title.

~~[(7) Polygraph examiners, as provided by Texas Occupations Code, Chapter 1703. Additional continuing education requirements relating to polygraph examiners may be found in Chapter 88 of this title.]~~

(6) [~~(8)~~] Property tax consultants, as provided by Texas Occupations Code, Chapter 1152. Additional continuing education requirements relating to property tax consultants may be found in Chapter 66 of this title.

(7) [~~(9)~~] Registered accessibility specialists, as provided by Texas Government Code, Chapter 469. Additional continuing education requirements relating to registered accessibility specialists may be found in Chapter 68 of this title.

(8) [~~(10)~~] Towing operators, as provided by Texas Occupations Code, Chapter 2308. Additional continuing education requirements relating to towing operators may be found in Chapter 86 of this title.

(9) [~~(11)~~] Water well drillers and pump installers, as provided by Texas Occupations Code, Chapters 1901 and 1902. Additional continuing education requirements relating to water well drillers and pump installers may be found in Chapter 76 of this title.

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 September 12, 2022.

TRD-202203655
Brad Bowman
General Counsel
Texas Department o Licensing and Regulation
Earliest possible date of adoption: October 23, 2022
For further information, please call: (512) 475-4879

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CHAPTER 82. BARBERS

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 82, §§82.10, 82.20, 82.80, and 82.120; and the repeal of existing rules at §§82.21-82.23, 82.26, 82.28, 82.29, 82.31, 82.40, 82.50-82.52, 82.54, 82.65, 82.70-82.74, 82.77, 82.78, 82.90, and 82.100-82.114, regarding the Barbering and Cosmetology program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 82, implement Texas Occupations Code, Chapter 1603, Barbering and Cosmetology, and former Chapter 1601, Barbers, which was repealed by House Bill (HB) 1560, Article 3, 87th Legislature, Regular Session (2021).

The proposed rules are necessary to implement HB 1560, which consolidates the bifurcated licensing and regulation of barbers and cosmetologists into a single Barbering and Cosmetology program. HB 1560 adopts the recommendations of the Texas Sunset Advisory Commission to consolidate and administer the two programs as one; consolidate comparable barbering and cosmetology license types for individuals, establishments, and schools; align requirements for all licenses; eliminate instructor licenses and wig-related licenses; replace the separate advisory boards with the Barbering and Cosmetology Advisory Board; replace the separate tuition protection accounts with a single account; and eliminate state regulation of barber poles. HB 1560 repeals former Texas Occupations Code, Chapter 1601, Barbers, which applied only to barbering; repeals former Texas Occupations Code, Chapter 1602, Cosmetologists, which applied only to cosmetology; and amends Texas Occupations Code, Chapter 1603, Regulation of Barbering and Cosmetology, to provide the consolidated statutory requirements for the licensing and regulation of both barbering and cosmetology.

The proposed rules implement HB 1560 by facilitating a transition from the two current rule chapters providing the rules for barbering and cosmetology, consisting of current 16 TAC, Chapter 82, Barbers, and Chapter 83, Cosmetologists, into a single, revised Chapter 83, Barbers and Cosmetologists, providing standardized rules for barbering and cosmetology. The proposed rules repeal from Chapter 82 the provisions that will no longer be necessary because they will be addressed in streamlined provisions for barbering and cosmetology in Chapter 83. The proposed rules amend the current license types for barbers to remove instructor licenses, which were repealed by HB 1560, and provide the licensing requirements and fees that will be in effect before September 1, 2023, the date the Department will begin issuing the new barbering and cosmetology license types created by HB 1560 under streamlined provisions in Chapter 83. The proposed rules amend the current barbering curriculum requirements to remove instructor courses, which were repealed by HB 1560, and provide the barbering curriculum standards that will be in effect before August 1, 2023, the date the streamlined curriculum standards for barbering and cosmetology will take effect under Chapter 83.

Separate from the proposed rules, the Department is pursuing a concurrent rulemaking to amend Chapter 83 to include streamlined provisions that apply to barbering and cosmetology.

Advisory Board Recommendations

The proposed rules were presented to and discussed by the Barbering and Cosmetology Advisory Board at its meeting on August 19, 2022. The Advisory Board did not make any changes to the proposed rules. The Advisory Board voted and recommended that the proposed rules be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §82.10, Definitions, by amending the definition for "Barber Instructor" to provide consistency with the repeal of instructor licenses by HB 1560 and to make clear that a person holding a practitioner license may provide instruction for services that are within the scope of the license; removing the definition for "Specialty Instructor" to provide consistency with the repeal of instructor licenses by HB 1560; and renumbering the remaining definitions accordingly.

The proposed rules amend §82.20, "License Requirements--Individuals", by amending the section title to instead read "License Requirements--Individuals (before September 1, 2023)" to indicate the time during which the section will be in effect. The proposed rules amend subsection (a) by removing a reference to the barber instructor license, which was repealed by HB 1560; remove current subsection (d), which relates to the barber instructor license repealed by HB 1560; relabel current subsection (e) to become new subsection (d); relabel current subsection (f) to become new subsection (e) and amend its language by correcting capitalization for consistency; relabel current subsection (g) to become new subsection (f); relabel current subsection (h) to become new subsection (g) and amend its language by correcting capitalization for consistency; relabel current subsection (i) to become new subsection (h); relabel current subsection (j) to become new subsection (i); add new subsection (j) to explain that §82.20 provides the minimum requirements for applications received before September 1, 2023; remove subsection (k), which relates to specialty instructor licenses repealed by HB 1560; remove subsection (l), which consists of provisions relating to operation of a remote service business that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83; and remove subsection (m), which consists of transition provisions that are no longer necessary.

The proposed rules repeal §82.21, "License Requirements--Examinations", which consists of examination provisions that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.22, "Permit Requirements--Barbershops, Specialty Shops, Dual Shops, Mini-Barbershops, Mini-Dual Shops, Mobile Shops, and Booth Rental", which consists of licensing provisions for specialty establishments that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.23, "Permit Requirements--Barber Schools", which consists of licensing provisions for establishments that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.26, "License Requirements--Renewals", which consists of license renewal provisions that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.28, "Substantial Equivalence or Endorsement and Provisional Licensure", which consists of licensing provisions that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.29, "Establishment Relocation, Change of Ownership, Owner Death or Incompetency", which consists of provisions relating to establishments that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.31, "Licenses--License Terms", which consists of licensing provisions that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.40, "Barber School Tuition Protection Account", because HB 1560 repealed the statutory authority for this account in former Texas Occupations Code, Chapter 1601, and created the Barbering and Cosmetology School Tuition Protection Account in Texas Occupations Code, Chapter 1603, which will be addressed in Chapter 83.

The proposed rules repeal §82.50, "Inspections--General", which consists of inspection provisions that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.51, "Initial Inspections--Inspection of Barber Schools Before Operation", which consists of inspection provisions that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.52, "Periodic Inspections", which consists of inspection provisions that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.54, "Corrective Modifications Following Inspection", which consists of inspection provisions that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.65, "Advisory Board on Barbering", because HB 1560 repealed the statutory authority for this advisory board in former Texas Occupations Code, Chapter 1601, and created the Barbering and Cosmetology Advisory Board in Texas Occupations Code, Chapter 1603, which will be addressed in Chapter 83.

The proposed rules repeal §82.70, "Responsibilities of Individuals", which consists of provisions relating to responsibilities of individual practitioners that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.71, "Responsibilities of Barbershops, Specialty Shops, Dual Shops, Mini-Barbershops and Mini-Dual Shops", which consists of provisions relating to responsibilities of establishments that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.72, "Responsibilities of Barber Schools", which consists of provisions relating to responsibilities of establishments that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.73, "Responsibilities of Students", which consists of provisions relating to responsibilities of students that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.74, "Responsibilities--Withdrawal, Reentry, or Transfer of Student", which consists of provisions relating to students that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.77, "Remote Service Business Responsibilities", which consists of provisions relating to remote service businesses that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.78, "Responsibilities of Mobile Shops", which consists of provisions relating to responsibilities of mobile shops that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules amend §82.80, "Fees", by amending the section title to instead read, "Fees (before September 1, 2023)", to indicate the time during which the section will be in effect. The

proposed rules amend subsection (a) by removing current subsection (a)(2), which relates to the barber instructor license repealed by HB 1560; removing current subsection (a)(6), which relates to specialty instructor licenses repealed by HB 1560; removing current subsection (a)(10), which relates to booth rental permits, which were repealed by HB 1560; and renumbering the remaining provisions accordingly. The proposed rules amend subsection (b) by removing current subsection (b)(2), which relates to the barber instructor license repealed by HB 1560; removing current subsection (b)(5), which relates to specialty instructor licenses repealed by HB 1560; and renumber the remaining provisions accordingly. The proposed rules amend subsection (g) by rewording to correct grammar and removing unnecessary language. The proposed rules add new subsection (k) to explain that §82.80 provides the barbering fees in effect before September 1, 2023.

The proposed rules repeal §82.90, "Administrative Penalties and Sanctions", which consists of enforcement provisions that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.100, "Health and Safety Definitions", which consists of health and safety provisions that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.101, "Health and Safety Standards--Department-Approved Disinfectants", which consists of health and safety provisions that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.102, "Health and Safety Standards--General Requirements", which consists of health and safety provisions that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.103, "Health and Safety Standards--Hair Cutting, Styling, Treatment and Shaving Services", which consists of health and safety provisions that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.104, "Health and Safety Standards--Facial Services", which consists of health and safety provisions that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.105, "Health and Safety Standards--Waxing Services", which consists of health and safety provisions that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.106, "Health and Safety Standards--Manicure and Pedicure Services", which consists of health and safety provisions that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.107, "Health and Safety Standards--Electric Drill Bits", which consists of health and safety provisions that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.108, "Health and Safety Standards--Footspas", which consists of health and safety provisions that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.109, "Health and Safety Standards--Wig and Hairpiece Services", which relates to standards for wig services that were deregulated by HB 1560.

The proposed rules repeal §82.110, "Health and Safety Standards--Hair Weaving Services", which consists of health and safety provisions that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.111, "Health and Safety Standards--Blood and Body Fluids", which consists of health and safety provisions that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.112, "Health and Safety Standards--Prohibited Products or Practices", which consists of health and safety provisions that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.113, "Health and Safety Standards--FDA", which consists of health and safety provisions that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules repeal §82.114, "Health and Safety Standards--Establishments", which consists of health and safety provisions that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

The proposed rules amend §82.120, "Technical Requirements--Curricula Standards", by amending the section title to instead read, "Technical Requirements--Curricula Standards (before August 1, 2023)" to indicate the time during which the rule will be in effect. The proposed rules remove current subsection (a), which relates to instructor courses repealed by HB 1560; remove current subsection (b), which consists of curriculum standards for the barber instructor license repealed by HB 1560; remove current subsection (c), which consists of curriculum standards for the barber instructor license repealed by HB 1560; relabel current subsection (d) to become new subsection (a); relabel current subsection (e) to become new subsection (b); relabel current subsection (f) to become new subsection (c) and amend its language to remove the requirement for 500 hours of related high school courses from the curriculum standards for the class A barber certificate in a public secondary program for high school students; relabel current subsection (g) to become new subsection (d); relabel current subsection (h) to become new subsection (e); relabel current subsection (i) to become new subsection (f); relabel current subsection (j) to become new subsection (g); and relabel current subsection (k) to become new subsection (h). The proposed rules remove current subsections (l)(2)(G) and (l)(2)(H), which relate to instructor courses repealed by HB 1560, and relabel the remaining subdivisions accordingly; relabel current subsection (l) to become new subsection (i); and amend new subsection (i)(3) by removing reference to the instructor license repealed by HB 1560. The proposed rules add new subsection (j) to explain that §82.120 provides the barbering curriculum standards in effect before August 1, 2023.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

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

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there will be an estimated loss in revenue to state government of $1,470 in the first year, and no loss in the second, third, fourth, and fifth years. The loss is a result of the repeal of instructor licenses and their associated fees, but the loss in revenue from individuals who will no longer obtain instructor licenses will be offset by the fees paid by those individuals to renew their practitioner licenses.

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

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, the public will benefit from the removal of instructor licenses because schools will be able to determine the qualifications of the individuals who teach their courses, and the population of potential employees to hire as teachers will increase with fewer limitations on hiring.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

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

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

4. The proposed rules require an increase or decrease in fees paid to the agency. The proposed rules repeal the instructor license fees, resulting in a decrease in fees paid to the agency.

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

6. The proposed rules expand, limit, or repeal an existing regulation. The proposed rules repeal regulations relating to instructor licenses and wig-related services, as well as health and safety standards that will instead be addressed in streamlined provisions for barbering and cosmetology in Chapter 83.

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

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

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

16 TAC §§82.10, 82.20, 82.80, 82.120

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 1603, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The proposed rules are also proposed under former Texas Occupations Code, Chapter 1601, which was repealed by HB 1560, Article 3, Section 3.33, but remains in effect by authority of the transition provisions in HB 1560, Article 3, Sections 3.34-3.42.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 1603. No other statutes, articles, or codes are affected by the proposed rules.

§82.10. Definitions.

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

(1) Act--Texas Occupations Code, Chapters 1601 and 1603.

(2) Barber Establishment--A barbershop, mini-barbershop, specialty shop, dual shop, mini-dual shop, mobile shop, or school that is subject to regulation under the Act.

(3) Barber Instructor--A person who holds a license issued [~~authorized~~] by the department to perform the acts of barbering for which the person will provide instruction at a licensed barber or cosmetology school [~~or offer instruction in any act or practice of barbering under Texas Occupations Code §1601.002~~].

(4) Barber School--An entity that holds a permit issued under this chapter to teach the practice of barbering and that may be privately or publicly funded. The term includes a barber college.

(5) Barber Technician--A person who holds a specialty license and who is authorized to practice the services defined in Texas Occupations Code §1601.002(1)(C), (D), (F), and (G).

(6) Barber Technician/Manicurist--A person who holds a specialty license and who is authorized to practice the services defined in Texas Occupations Code §1601.002(1)(C) - (G).

(7) Barber Technician/Hair Weaver--A person who holds a specialty license and who is authorized to practice the services defined in Texas Occupations Code §1601.002(1)(C), (D), (G) and (H).

(8) Beard--The beard extends from below the line of demarcation and includes all facial hair regardless of texture.

(9) Board--The Advisory Board on Barbering.

(10) Booth Rental Permit--A permit issued or renewed to an applicant at the same time the applicant is issued one of the following license types: barber, barber instructor, specialty instructor, barber technician, manicurist, barber technician/manicurist, barber technician/hair weaver, or hair weaver; which allows the holder to lease space on the premises of a barber shop, specialty shop, mini-barbershop, dual shop, or mini-dual shop to engage in the practice of barbering as an independent contractor.

(11) Class A Barber--A person authorized by the department to perform any act or practice of barbering under Texas Occupations Code §1601.002.

(12) Commission--The Texas Commission of Licensing and Regulation.

(13) Common Area--An area within a barbering establishment that contains equipment and facilities available for use by all persons who practice barbering on the premises under a license, certificate, or permit issued under this chapter.

(14) Department--The Texas Department of Licensing and Regulation.

(15) Distance Education--A formal instructional process in which the student and teacher are separated by physical distance and a variety of communication technologies are used to deliver instruction in theory to the student. Courses taught by distance education do not satisfy the requirements of the practical portion of the course curriculum.

(16) Digital Network--Any online-enabled application, Internet website, or system offered or used by a remote service business that allows a client to arrange for a digitally prearranged remote service.

(17) Digitally Prearranged Remote Service--A barbering or cosmetology service performed for compensation by a person holding a license, certificate of registration, or permit under Texas Occupations Code, Chapter 1601 or 1602 or this chapter that is:

(A) prearranged through a digital network; and

(B) performed at a location other than a place of business that is licensed or permitted under Texas Occupations Code, Chapter 1601, 1602, or 1603.

(18) Dual Shop--A shop owned, operated, or managed by a person holding a dual barber and beauty shop license issued under Texas Occupations Code, Chapter 1603.

(19) Guest Presenter--A person who possesses subject matter knowledge in a specific curriculum topic and who has the teaching ability necessary to impart the information to students. Instruction is limited to the presenter's area of expertise and a licensed instructor must be present during the classroom sessions in order for students to earn hours.

(20) Hair Relating to Haircutting--The hair extending from the scalp of the head is recognized as the hair trimmed, shaped or cut in the process of hair cutting.

(21) Hair weaver--A person who holds a Hair Weaving Specialty Certificate of Registration and who may perform only the practice of barbering as defined in Texas Occupations Code, §1601.002(1)(H).

(22) License--A license, permit, certificate, or registration issued under the authority of the Act.

(23) License by Substantial Equivalence--A process that permits a barber license holder from another jurisdiction or foreign country to obtain a Texas barber license without repeating barber education or examination license requirements.

(24) Line of Demarcation between "the hair" and "the beard"--The demarcation boundary between scalp hair ("the hair") and facial hair ("the beard") is a horizontal line drawn from the bottom of the ear.

(25) Manicurist--A person who holds a specialty license and who is authorized to practice the services defined in Texas Occupations Code §1601.002(1)(E) and (F).

(26) Mini-Barbershop--A barber establishment in which a person practices barbering under a license, certificate, or permit issued under this chapter and which consists of a room or suite of rooms that is one of a number of connected establishments in a single premises that open onto a common hallway or common area.

(27) Mini-Dual Shop--A shop owned, operated, or managed by a person holding a mini-barber and mini-beauty shop license under Texas Occupations Code §1603.207.

(28) Mini-Barbershop Permittee--A person or entity that holds a license for a mini-barbershop or mini-dual shop. The mini-barbershop permittee shall be responsible for rules under Texas Occupations Code, Chapters 1601, 1602, and 1603 and 16 TAC Chapters 82 and 83 for its mini-barbershop or mini-dual shop.

(29) Mobile Shop--A barbershop, specialty shop, or dual shop that is operated in a self-contained, self-supporting, enclosed mobile unit.

(30) Provisional license--A license that allows a person to practice barbering in Texas pending the department's approval or denial of that person's application for licensure by substantial equivalence.

(31) Remote Service Business--A corporation, partnership, sole proprietorship, or other entity that, for compensation, enables a

client to schedule a digitally prearranged remote service with a person holding a license, certificate of registration, or permit under Texas Occupations Code, Chapters 1601, 1602, or 1603.

(32) Self-Contained--Containing within itself all that is necessary to be able to operate without connecting to outside utilities such as water and electricity.

(33) Sideburn--Part of a haircut or style that is a continuation of the natural scalp hair growth, does not extend below the line of demarcation, and is not connected to any other bearded area on the face.

(34) Special Event--Includes weddings, quinceaneras, pageants, proms, debutante balls, birthday parties, religious and cultural ceremonies, and on-stage performances.

~~[(35) Specialty Instructor--A person authorized by the department to perform or offer instruction in an act or practice of barbering limited to Texas Occupations Code §1601.002(1)(C) - (H).]~~

(35) [~~(36)~~] Specialty Shop--A barber establishment in which only the practice of barbering as defined in Texas Occupations Code §1601.002(1)(E), (F), or (H) is performed.

(36) [~~(37)~~] Student Permit--A permit issued by the department to a student enrolled in barber school which states the student's name and the name of the school. A person holding an active student permit may shampoo and condition a person's hair in a facility licensed under Texas Occupations Code, Chapters 1601 and 1603.

(37) [~~(38)~~] Weaving--The process of attaching, by any method, commercial hair (hair pieces, hair extensions) to a client's hair and/or scalp. Weaving is also known as hair integration or hair intensification.

§82.20. License Requirements--Individuals (before September 1, 2023).

(a) To be eligible for a Class A Barber Certificate, [~~Barber Instructor License,~~] Barber Technician License, Manicurist License, Barber Technician/Manicurist License, Barber Technician/Hair Weaving License or Hair Weaving Specialty Certificate of Registration, an applicant must:

(1) submit the completed application on a department-approved form;

(2) pass the applicable examination;

(3) pay the fee required under §82.80; and

(4) meet other applicable requirements of the Act, this section, and the applicable curriculum standards set forth in §82.120.

(b) To be eligible for a Student Permit, an applicant must:

(1) submit the completed application on a department-approved form;

(2) pay the fee required under §82.80; and

(3) meet other applicable requirements of the Act, this section and the applicable curriculum standards set forth in §82.120.

(c) Class A Barber Certificate--To be eligible for a Class A barber certificate, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.253.

~~[(d) Barber Instructor License--To be eligible for a Barber Instructor License, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.254.]~~

(d) [~~(c)~~] Barber Technician License--To be eligible for a Barber Technician License, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.256.

(e) [~~(f)~~] Manicurist License--To be eligible for a Manicurist License [~~license~~], an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.257.

(f) [~~(g)~~] Hair Weaving Specialty Certificate of Registration--To be eligible for a Hair Weaving Specialty Certificate of Registration, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.258.

(g) [~~(h)~~] Student Permit--To be eligible for a Student Permit [~~permit~~], an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.260.

(h) [~~(i)~~] Barber Technician/Manicurist Specialty License--To be eligible for a Barber Technician/Manicurist Specialty License, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.262.

(i) [~~(j)~~] Barber Technician/Hair Weaving Specialty License--To be eligible for a Barber Technician/Hair Weaving Specialty License, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.263.

(j) This section provides the minimum requirements for applications received by the department before September 1, 2023. For applications received on or after September 1, 2023, §83.200 provides the minimum requirements.

~~[(k) To be eligible for a Specialty Instructor License as a Manicurist Instructor, Barber Technician Instructor, Barber Technician/Manicurist Instructor, Barber Technician/Hair Weaving Instructor, or Hair Weaving Instructor, an applicant must:]~~

~~[(1) submit the completed application on a department-approved form;]~~

~~[(2) pay the fee required under §82.80;]~~

~~[(3) be at least 18 years of age;]~~

~~[(4) have a high school diploma or high school equivalency certificate;]~~

~~[(5) hold a current specialty license in the specialty or specialties in which the applicant is seeking licensure; and]~~

~~[(A) have completed a course consisting of 750 hours of instruction in barber courses and methods of teaching in a barber school; or]~~

~~[(B) have at least one year of licensed work experience in each of the specialties in which the applicant is seeking licensure; and]~~

~~*[(i)* have completed 500 hours of instruction in barber courses and methods of teaching in a barber school, or]~~

~~*[(ii)* have completed 15 semester hours in education courses from an accredited college or university within the 10 years preceding the date of the application; or]~~

~~*[(iii)* have obtained a degree in education from an accredited college or university; and]~~

~~[(6) pass a written and practical exam required under §82.21.]~~

~~[(l) To operate a remote service business an individual must be licensed to practice barbering and must:]~~

[(1) in a manner prescribed by the department, notify the department of the intent to operate a remote service business;]

[(2) provide a permanent mailing address; and]

[(3) verify that the remote service business complies with the requirements of the Act and this chapter.]

[(m) The purpose of this transition rule is to provide guidance on how to implement the transition from 1,500 to 1,000 hours.]

[(1) Beginning January 1, 2020, the department may allow students enrolled on or after January 1, 2020 in a 1,500-hour program to transfer hours towards a 1,000-hour program if the hours meet the required technical standards. A student enrolling in barber school on or after January 1, 2020 may request to transfer completed hours of a 1,500-hour program towards an approved 1,000-hour program or to transfer to another school.]

[(2) Upon request of a student enrolled on or after January 1, 2020, the school must apply hours earned towards a 1,000-hour program if the school has an approved 1,000-hour program or allow the student to transfer to another school. This rule expires on December 1, 2020.]

§82.80. Fees (before September 1, 2023).

(a) Application Fees:

(1) Class A Barber Certificate--$55

[(2) Barber Instructor License--$65]

(2) [(3)] Specialty License--Barber Technician, Manicurist, Barber Technician/Manicurist, Barber Technician/Hair Weaving--$30

(3) [(4)] Student Permit--$25

(4) [(5)] Specialty Certificate of Registration--Hair Weaving--$30

[(6) Specialty Instructor License--Barber Technician, Manicurist, Barber Technician/Manicurist, Barber Technician/Hair Weaving, Hair Weaving--$65]

(5) [(7)] Barbershop Permit--$60

(6) [(8)] Mini-Barbershop Permit--$60

(7) [(9)] Specialty Shop Permit--$50

[(10) Booth Rental Permit--No fee]

(8) [(11)] School Original Permit--$300

(9) [(12)] Dual Shop--$130

(10) [(13)] Mini-Dual Shop Permit--$60

(11) [(14)] Mobile Shop--$60

(b) Renewal Fees:

(1) Class A Barber Certificate--$55

[(2) Barber Instructor License--$55]

(2) [(3)] Specialty License--Barber Technician, Manicurist, Barber Technician/Manicurist, Barber Technician/Hair Weaving--$30

(3) [(4)] Specialty Certificate of Registration--Hair Weaving--$30

[(5) Specialty Instructor License--Barber Technician, Manicurist, Barber Technician/Manicurist, Barber Technician/Hair Weaving, Hair Weaving--$30]

(4) [(6)] Barbershop Permit--$60

(5) [(7)] Mini-Barbershop Permit--$60

(6) [(8)] Specialty Shop Permit--$50

(7) [(9)] Booth Rental Permit--No fee

(8) [(10)] School Permit--$200

(9) [(11)] Dual Shop--$100

(10) [(12)] Mini-Dual Shop Permit--$60

(11) [(13)] Mobile Shop--$60

(c) Substantial equivalence or Endorsement Fee--$55

(d) Revised/Duplicate License/Certificate/Permit/Registration--$25

(e) Verification of license, permit or certificate to other states--$15

(f) Law and Rules Book Fee--$10

(g) Late renewal [renewals] fees for licenses, certificates and permits issued under this chapter are provided under §60.83 [of this title] (relating to Late Renewal Fees).

(h) Initial Inspection or Re-inspection of school Fees (for each occurrence)--$200

(i) All fees are nonrefundable, except as otherwise provided by law or commission rule.

(j) Law and rule book fee is included in the application and renewal fees for student, individual and establishment licenses, certificates and permits.

(k) This section provides the fees that are required before September 1, 2023. Section 83.201 provides the fees that are required on or after September 1, 2023.

§82.120. Technical Requirements--Curricula Standards (before August 1, 2023).

[(a) Requirement for enrollment. No person may enroll in an instructor's course in an approved barber school before receiving the appropriate license.]

[(b) The curriculum standards for the 750 hour barber instructor license must be completed in a course of not less than 20 weeks as follows:]
[Figure: 16 TAC §82.120(b)]

[(c) The curriculum standards for the barber instructor license with one year experience consists of 500 hours to be completed in a course of not less than 13 weeks as follows:]
[Figure: 16 TAC §82.120(c)]

(a) [(d)] The curriculum standards for the class A barber certificate in a private or public post-secondary barber school consists of 1,000 hours, to be completed in a course of not less than six months, as follows:
Figure: 16 TAC §82.120(a)
[Figure: 16 TAC §82.120(d)]

(b) [(e)] The curriculum standards for the class A barber certificate while holding a cosmetology operator license consists of 300 hours, to be completed in a course of not less than 9 weeks, as follows:
Figure: 16 TAC §82.120(b)
[Figure: 16 TAC §82.120(e)]

(c) [(f)] The curriculum standards for the class A barber certificate in a public secondary program for high school students consists

of 1,000 hours of instruction in barber courses [and 500 hours of related high school courses prescribed by the commission in a vocational barber program in a public school] to be completed in a course of not less than six months, with the 1,000 hours as follows:
Figure: 16 TAC §82.120(c)
[Figure: 16 TAC §82.120(f)]

(d) [(g)] The curriculum standards for the manicurist license consists of 600 hours, to be completed in a course of not less than 16 weeks, as follows:
Figure: 16 TAC §82.120(d)
[Figure: 16 TAC §82.120(g)]

(e) [(h)] The curriculum standards for the barber technician/manicurist license consists of 900 hours, to be completed in a course of not less than 24 weeks, as follows:
Figure: 16 TAC §82.120(e)
[Figure: 16 TAC §82.120(h)]

(f) [(i)] The curriculum standards for the barber technician/hair weaving license consists of 600 hours to be completed in a course of not less than 16 weeks, as follows:
Figure: 16 TAC §82.120(f)
[Figure: 16 TAC §82.120(i)]

(g) [(j)] The curriculum standards for the barber technician license consists of 300 hours, to be completed in a course of not less than 8 weeks, as follows:
Figure: 16 TAC §82.120(g)
[Figure: 16 TAC §82.120(j)]

(h) [(k)] The curriculum standards for the hair weaving specialty certificate of registration consists of 300 hours as follows:
Figure: 16 TAC §82.129(h)
[Figure: 16 TAC §82.120(k)]

(i) [(l)] Field Trips.

(1) Barber related field trips are permitted under the following conditions for students enrolled in the following courses and the guidelines under this subsection must be strictly followed.

(2) A student may obtain the following field trip hours:

(A) a maximum of 50 hours out of the 1,000 hour class A Barber course;

(B) a maximum of 30 hours for the Manicure course;

(C) a maximum of 20 hours for the Barber Technician course;

(D) a maximum of 45 hours for the Barber Technician/Manicurist course;

(E) a maximum of 30 hours for the Barber Technician/Hair Weaving course;

(F) a maximum of 20 hours for the Hair Weaving course; and

[(G) a maximum of 35 hours for the 750 hour Instructor course;]

[(H) a maximum of 25 hours for the 500 hour Instructor course; and]

(G) [(I)] a maximum of 15 hours for the Cosmetology Operator to Class A Barber course.

(3) Students must be under the supervision of an [a licensed] instructor from the school where the student is enrolled at all times during the field trip. The instructor-student ratio required in a school is required on a field trip.

(4) Complete documentation is required, including student names, instructor names, activity, location, date, and duration of the activity.

(5) No credit may be earned for travel.

(j) This section provides the curriculum standards that are effective before August 1, 2023. Section 83.202 provides the curriculum standards that are required on or after August 1, 2023.

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

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Brad Bowman
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Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7750

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16 TAC §§82.21 - 82.23, 82.26, 82.28, 82.29, 82.31, 82.40, 82.50 - 82.52, 82.54, 82.65, 82.70 - 82.74, 82.77, 82.78, 82.90, 82.100 - 82.114

STATUTORY AUTHORITY

The proposed repeals are proposed under Texas Occupations Code, Chapters 51 and 1603, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt repeals as necessary to implement these chapters and any other law establishing a program regulated by the Department. The proposed repeals are also proposed under former Texas Occupations Code, Chapter 1601, which was repealed by HB 1560, Article 3, Section 3.33, but remains in effect by authority of the transition provisions in HB 1560, Article 3, Sections 3.34-3.42.

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapters 51 and 1603. No other statutes, articles, or codes are affected by the proposed repeals.

§82.21. License Requirements--Examinations.

§82.22. Permit Requirements--Barbershops, Specialty Shops, Dual Shops, Mini-Barbershops, Mini-Dual Shops, Mobile Shops, and Booth Rental.

§82.23. Permit Requirements--Barber Schools.

§82.26. License Requirements--Renewals.

§82.28. Substantial Equivalence or Endorsement and Provisional Licensure.

§82.29. Establishment Relocation, Change of Ownership, Owner Death or Incompetency.

§82.31. Licenses--License Terms.

§82.40. Barber School Tuition Protection Account.

§82.50. Inspections--General.

§82.51. Initial Inspections--Inspection of Barber Schools Before Operation.
§82.52. Periodic Inspections.
§82.54. Corrective Modifications Following Inspection.
§82.65. Advisory Board on Barbering.
§82.70. Responsibilities of Individuals.
§82.71. Responsibilities of Barbershops, Specialty Shops, Dual Shops, Mini-Barbershops and Mini-Dual Shops.
§82.72. Responsibilities of Barber Schools.
§82.73. Responsibilities of Students.
§82.74. Responsibilities--Withdrawal, Reentry, or Transfer of Student.
§82.77. Remote Service Business Responsibilities.
§82.78. Responsibilities of Mobile Shops.
§82.90. Administrative Penalties and Sanctions.
§82.100. Health and Safety Definitions.
§82.101. Health and Safety Standards--Department-Approved Disinfectants.
§82.102. Health and Safety Standards--General Requirements.
§82.103. Health and Safety Standards--Hair Cutting, Styling, Treatment and Shaving Services.
§82.104. Health and Safety Standards--Facial Services.
§82.105. Health and Safety Standards--Waxing Services.
§82.106. Health and Safety Standards--Manicure and Pedicure Services.
§82.107. Health and Safety Standards--Electric Drill Bits.
§82.108. Health and Safety Standards--Footspas.
§82.109. Health and Safety Standards--Wig and Hairpiece Services.
§82.110. Health and Safety Standards--Hair Weaving Services.
§82.111. Health and Safety Standards--Blood and Body Fluids.
§82.112. Health and Safety Standards--Prohibited Products or Practices.
§82.113. Health and Safety Standard--FDA.
§82.114. Health and Safety Standard--Establishments.

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

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CHAPTER 83. BARBERS AND COSMETOLOGISTS [~~COSMETOLOGISTS~~]

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 83, §§83.1, 83.10, 83.20 - 83.26, 83.28, 83.29, 83.40, 83.51, 83.70 - 83.74, 83.77, 83.78, 83.80, 83.90, 83.100 - 83.108, 83.110 - 83.115, and 83.120; new rules at §§83.2, 83.31, 83.50, 83.65, and 83.200 - 83.202; the repeal of existing rules at §§83.31, 83.50, 83.52, 83.54, 83.65, and 83.109; and an amendment to the rule chapter title, regarding the Barbering and Cosmetology program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 83, implement Texas Occupations Code, Chapter 1603, Barbering and Cosmetology, and former Chapter 1602, Cosmetologists, which was repealed by House Bill (HB) 1560, Article 3, 87th Legislature, Regular Session (2021).

The proposed rules are necessary to implement HB 1560, which consolidates the bifurcated licensing and regulation of barbers and cosmetologists into a single Barbering and Cosmetology program. HB 1560 adopts the recommendations of the Texas Sunset Advisory Commission to consolidate and administer the two programs as one; consolidate comparable barbering and cosmetology license types for individuals, establishments, and schools; align requirements for all licenses; eliminate instructor licenses and wig-related licenses; replace the separate advisory boards with the Barbering and Cosmetology Advisory Board; replace the separate tuition protection accounts with a single account; and eliminate state regulation of barber poles. HB 1560 repeals former Texas Occupations Code, Chapter 1601, Barbers, which applied only to barbering; repeals former Texas Occupations Code, Chapter 1602, Cosmetologists, which applied only to cosmetology; and amends Texas Occupations Code, Chapter 1603, Regulation of Barbering and Cosmetology, to provide the consolidated statutory requirements for the licensing and regulation of both barbering and cosmetology.

The proposed rules implement HB 1560 by creating a transition from the two current rule chapters providing the rules for barbering and cosmetology, consisting of current 16 TAC, Chapter 82, Barbers, and Chapter 83, Cosmetologists, into a single, revised Chapter 83, Barbers and Cosmetologists, providing standardized rules for barbering and cosmetology. The proposed rules harmonize the rules for barbers and cosmetologists by aligning health and safety standards, license requirements, and responsibilities for comparable practitioner, school, and establishment license types, in accordance with the new statutory framework provided by HB 1560. The proposed rules include transition provisions to explain how each current license type will transition to the corresponding new license type. The proposed rules provide curriculum standards for each new license type that become effective on August 1, 2023, a date that enables schools to adjust their courses for the fall semester. The proposed rules provide for the Department to begin issuing the new license types on September 1, 2023, with updated fees set in amounts reasonable and necessary to cover the costs of administering the program.

Separate from the proposed rules, the Department is pursuing a concurrent rulemaking to amend Chapter 82 by repealing provisions that will become unnecessary due to the changes to Chapter 83 in the proposed rules.

Health and Safety Workgroup Recommendations

The proposed rules include recommendations by the Health and Safety Workgroup of the Barbering and Cosmetology Advisory Board to exclude isopropyl and ethyl alcohol from the list of Department-approved chemicals that may be used as a disinfectant for implements and tools; and align establishment equipment requirements with the type of services being offered rather than the type of establishment license held, to alleviate unnecessary expenses for licensees.

Education and Examination Workgroup Recommendations

The proposed rules include recommendations by the Health and Safety Workgroup of the Barbering and Cosmetology Advisory Board to impose a requirement of four hours of continuing education for the renewal of a practitioner license, with a temporary exemption for current holders of barbering licenses; update the topics required and allowed for continuing education hours; streamline the curriculum standards between similar barbering and cosmetology license types; allow class A barber students and cosmetology operator students to be taught together for 700 hours of the 1,000-hour course; designate the curriculum requirements relating to theory hours for each license type; and increase the percentage of hours that may be obtained through field trips.

Advisory Board Recommendations

The proposed rules, excluding the changes described under the next subheading, were presented to and discussed by the Barbering and Cosmetology Advisory Board at its meeting on August 19, 2022. The Advisory Board did not make any changes to the proposed rules. The Advisory Board voted and recommended that the proposed rules be published in the *Texas Register* for public comment.

Additional Changes by Department Staff

The proposed rules include changes that were not presented to the Advisory Board and were subsequently added by Department staff. These changes were not addressed in the Advisory Board's recommendation to publish the proposed rules. Proposed new §83.2 was modified by removing the plural pronouns "they" and "their", which referred to the singular noun "person", from subsections (a) and (b) and rephrasing to remove the need for pronouns. Section 83.25 was modified by adding the preposition "A" to the beginning of new subsection (e) to correct grammar. Proposed new §83.50 was modified by adding new subsection (d) to clearly provide that establishments and schools must cooperate with inspectors and investigators in the performance of inspections and investigations. Section 83.77 was modified in subsection (e)(5) by adding a comma to correct punctuation and adding the preposition "a" to correct grammar, and in subsection (j) by removing the preposition "a" to correct grammar. Section 83.80 was modified by correcting an erroneous deletion of "salons" in new subsection (a)(4). Section 83.106 was modified by removing an erroneous repetition of the phrase "or a" from subsection (f) to correct grammar. Section 83.111 was modified in subsection (a) by replacing "contract the skin" with "contact the skin" for clarity. Proposed new §83.201 was modified by rephrasing and reorganizing the license types listed in subsections (a) and (b) to improve clarity; and adding to subsections (a) through (i) the amount of each corresponding fee that will be in effect on or after September 1, 2023, which are based on calculations conducted by Department staff that were not yet complete at the time the proposed rules were presented to the Advisory Board.

SECTION-BY-SECTION SUMMARY

The proposed rules amend the title of Chapter 83 to read "Barbers and Cosmetologists" to reflect the chapter's expanded applicability to barbers and cosmetologists.

The proposed rules amend §83.1, Authority, by revising the list of rulemaking authority to include HB 1560, Article 3, and remove Chapter 1602, which was repealed by HB 1560.

The proposed rules add new §83.2, Transition Provisions, to provide guidance regarding the transition to the new license types and requirements created by HB 1560. The proposed rules add new subsection (a) to clarify the services that may be performed by current holders of a cosmetology hair weaving specialty certificate until the certificate expires or is replaced by a hair weaving license. The proposed rules add new subsection (b) to provide the services that may be performed by current holders of barber specialty licenses and the applicable replacement license types, including new subsection (b)(1) for holders of barber technician licenses, who will be eligible for esthetician licenses; new subsection (b)(2) for holders of barber manicurist licenses, who will be eligible for manicurist licenses; new subsection (b)(3) for holders of barber technician/manicurist specialty licenses, who will be eligible for manicurist/esthetician licenses; new subsection (b)(4) for holders of barber technician/hair weaving specialty licenses, who will be eligible for hair weaving specialist/esthetician licenses; and new subsection (b)(5) for holders of barber hair weaving specialty certificates of registration, who will be eligible for hair weaving licenses. The proposed rules add new subsection (c) to clarify that current holders of barber or cosmetology practitioner licenses may provide instruction for the same activities they are allowed to perform under their license; add new subsection (d) to provide an exemption for current holders of barber school permits from the requirement in §83.72(u) for the school to have a classroom separated from the laboratory area by walls extending to the ceiling, and to clarify that they are eligible for a private or public school license; and add new subsection (e) to specify what course types schools can apply to the Department for approval to provide, including new subsection (e)(1) to provide the standards in effect before September 1, 2023, consisting of new subsection (e)(1)(A) for barber schools and new subsection (e)(1)(B) for beauty culture schools, and new subsection (e)(2) to specify the standards in effect on or after September 1, 2023. The proposed rules add new subsection (f) to clarify the services that may be provided by current holders of establishment licenses and the applicable replacement license types, including new subsection (f)(1) for holders of barbershop permits, who will be eligible for full-service establishment licenses; new subsection (f)(2) for holders of beauty shop licenses, who will be eligible for full-service establishment licenses; new subsection (f)(3) for holders of dual shop licenses, who will be eligible for full-service establishment licenses; new subsection (f)(4) for holders of barber manicurist specialty shop permits, who will be eligible for manicurist specialty establishment licenses; new subsection (f)(5) for holders of hair weaving specialty shop permits, who will be eligible for hair weaving specialty establishment licenses; and new subsection (f)(6) for holders of mini or mobile licenses, who become eligible for mini or mobile establishment licenses, respectively. The proposed rules add new subsection (g) to clarify that a reference to a license issued under the Act also refers to the corresponding license type issued before the license transition, as identified in the previous subsections.

The proposed rules amend §83.10, Definitions, by amending the definition for "Act" to remove the reference to Chapter 1602, which was repealed by HB 1560; adding a definition for "Barbering" to provide consistency with its description in Occupations Code §1603.0011, as added by HB 1560; removing the definition for "Beauty Culture School" because the term was repealed by HB 1560; amending the definition for "Board" to provide consistency with the Barbering and Cosmetology Advisory Board described in Occupations Code, Chapter 1603, Subchapter B, as amended by HB 1560; removing the definition for "Booth rental license", which was repealed by HB 1560; adding a definition for "Class A Barber" to provide consistency with the Class A barber license described in Occupations

Code §1603.2103(a)(1), as added by HB 1560; amending the definition for "Common Area" to make the term applicable to all schools and establishments; adding a definition for "Cosmetology" to provide consistency with the description of the same term in Occupations Code §1603.0011, as added by HB 1560; removing the definition for "Cosmetology establishment" because HB 1560 removed the distinction between barber and cosmetology establishments; relocating in alphabetic order the definition for "Department"; amending the definition for "Digitally Prearranged Remote Service" to provide consistency with its definition in Occupations Code §1603.208(a)(2), as amended by HB 1560; removing the definition for "Dual Shop" because the dual shop license was repealed by HB 1560; adding a definition for "Establishment" to provide consistency with its definition in Occupations Code §1603.001(4), as amended by HB 1560; amending the definition for "Esthetician" to provide consistency with the esthetician license described in Occupations Code §1603.2103(a)(4), as added by HB 1560; amending the definition for "Esthetician/Manicurist" to provide consistency with the manicurist/esthetician license described in Occupations Code §1603.2103(a)(5), as added by HB 1560; adding a definition for "Executive Director" to provide consistency with its definition in Occupations Code §1603.001(5); relocating in alphabetical order the definition for "Eyelash Extension Application"; relocating in alphabetic order and amending the definition for "Eyelash Extension Specialist" to provide consistency with the eyelash extension specialist license described in Occupations Code §1603.2103(a)(8), as added by HB 1560; adding a definition for "Full-service Establishment" to refer to the holder of the establishment license described in Occupations Code §1603.2203(a)(1), as added by HB 1560; amending the term "Hair weaver" to become "Hair weaving specialist" and amending its definition to provide consistency with the hair weaving specialist license described in Occupations Code §1603.2103(a)(6), as added by HB 1560; adding a definition for "Hair weaving specialist/esthetician" to refer to the holder of the hair weaving specialist/esthetician license type described in Occupations Code §1603.2103(a)(7), as added by HB 1560; amending the definition for "Instructor" to provide consistency with the requirements for providing instruction in Occupations Code §1603.2303(a), as added by HB 1560; amending the definition for "Law and Rules Book" to clarify it is "a publication prepared and issued in a format prescribed by the department" and remove the reference to Chapter 1602, which was repealed by HB 1560; amending the definition for "License" to rephrase its wording for clarity and to specify that the term does not include a student permit; amending the definition for "License by substantial equivalence" to clarify its applicability to barbering license holders from outside the state; amending the definition for "Manicurist" to provide consistency with the manicurist license described in Occupations Code §1603.2103(a)(3), as added by HB 1560; amending the term "Mini-Salon" to become "Mini-Establishment" and amending its definition to provide consistency with the mini-establishment license described in Occupations Code §1603.2203(a)(7), as added by HB 1560; amending the term "Mobile Shop" to become "Mobile Establishment" and amending its definition to provide consistency with the mobile establishment license described in Occupations Code §1603.2203(a)(8), as added by HB 1560; amending the definition for "Operator" to provide consistency with the cosmetology operator license type described in Occupations Code §1603.2103(a)(2), as added by HB 1560; adding a definition for "Practitioner" to refer to the holder of an individual practitioner license described in Occupations Code §1603.2103(a), as added by HB 1560; adding a definition for "Private School" to refer to the holder of the private postsecondary school license described in Occupations Code §1603.2303(a), as added by HB 1560; amending the definition for "Provisional license" to clarify its applicability to the practice of barbering; adding a definition for "Public School" to refer to the holder of the public secondary school license or the public postsecondary school license described in Occupations Code §1603.2303(a), as added by HB 1560; amending the definition for "Remote Service Business" to provide consistency with its definition in Occupations Code §1603.208(a)(3), as amended by HB 1560; relocating in alphabetical order the definition for "Safety Razor"; adding a definition for "School" to provide consistency with its definition in Occupations Code §1603.001(7), as added by HB 1560; amending the definition for "Special Event" to clarify its meaning and provide consistency with its use in Occupations Code §1603.2109, as added by HB 1560; adding a definition for "Specialty Establishment" to refer to the holder of an establishment license described in Occupations Code §1603.2203(a)(2) through (a)(6), as added by HB 1560; amending the definition for "Specialty Instructor" to refer to an individual providing instruction within the scope of an individual practitioner license described in Occupations Code §1603.2103(a)(3) through (a)(8), as amended by HB 1560; removing the definition for "Specialty Salon or Specialty Shop" because the term becomes unnecessary with the proposed new definition for "Specialty Establishment"; amending the definition for "Student Permit" to clarify its applicability to barbering; removing the definition for "Wig Specialist" because the wig specialty certificate was repealed by HB 1560; and renumbering the remaining provisions accordingly.

The proposed rules amend §83.20, License Requirements--Individuals, by amending the rule title to read "License Requirements--Individuals (before September 1, 2023)" to clarify the rule's applicability to practitioner license applications received by the Department before September 1, 2023; amending subsection (a) to rephrase subsection (a)(1) for clarity, add clarifying language to subsection (a)(2), remove the text in current subsection (a)(5)(B) that allowed instruction hours to be completed in a public school vocational program, and relabel the remaining subsections accordingly; amending subsection (b)(5)(C)(i) to clarify that an application for an esthetician/manicurist specialty license received by the Department on or after August 1, 2023, is only required to have 800 hours of esthetician/manicure instruction; rephrasing subsection (c) for clarity; amending subsection (e) to remove references to the wig specialty certificate that was repealed by HB 1560, remove the text of current subsection (e)(4)(B) providing the instruction hours for a wig specialty certificate, relocate the text of current subsection (e)(4)(A) to the main body of subsection (e)(4), and relabel subsection (e)(4) to remove subsections (e)(4)(A) and (e)(4)(B); removing the current text in subsection (f) providing the eligibility requirements for an instructor or specialty instructor license, which were repealed by HB 1560; relocating the current text in subsection (g) to subsection (f) and rephrasing the text for clarity; adding new text to subsection (g) to clarify the applicability of the rule; removing subsection (h), which provided that a license application is valid for one year from the date it is filed with the Department, because the subject is addressed in the Department's general procedural rules in 16 TAC, Chapter 60, which are applicable to all programs administered by the Department; removing subsection (i), which contained requirements for operating a remote service business, and relocating its substance to §83.77(a); and

removing subsection (j), which contained transition provisions that are no longer necessary.

The proposed rules amend §83.21, License Requirements--Examinations, by rephrasing subsection (a)(1) for clarity; amending subsection (b) to expand its applicability beyond operator hours; amending subsection (d) to rephrase its wording for clarity and expand its applicability to barbering services; amending subsection (e) to rephrase its wording for clarity and remove the numerical designation for the passing grade of an examination; and amending subsection (h) to clarify that the Department may require proof of parental approval for models under 18 years of age.

The proposed rules amend §83.22, License Requirements--Beauty Salons, Specialty Salons, Mini-Salons, Dual Shops, Mini-Dual Shops, Mobile Shops, and Booth Rentals (Independent Contractors). The proposed rules amend the section title to read "License Requirements--Establishments" to clarify the section's expanded applicability to all establishments; amend subsection (a) to expand its applicability to all establishments; rephrase subsection (a)(3) for clarity and to add the requirement for the establishment application to be verified; amend the punctuation of subsection (a)(4) to allow for additional subsections; add new subsection (a)(5) to require an applicant to own or rent the establishment; add new subsection (a)(6) to require the applicant to have not committed an act that constitutes a ground for denial of a license; amending subsection (b) by removing the current text regarding applications for dual shop or mini-dual shop licenses, which were repealed by HB 1560, and adding text to provide additional requirements for establishment license applicants, including new subsection (b)(1) to require the establishment to meet minimum health and safety standards for an establishment, and new subsection (b)(2) to require the establishment to comply with all other requirements; amending subsection (c) to update a cross-reference and expand the rule's applicability to all mobile establishments; and removing subsection (d), which provided requirements for operating a remote services business that are duplicative of new §83.77(a), and provided requirements for operating a beauty salon, specialty salon, dual shop, mobile shop, mini-salon, or mini-dual shop, all of which were repealed by HB 1560.

The proposed rules amend §83.23, License Requirements--Beauty Culture Schools. The proposed rules amend the rule title to read "License Requirements--Schools" to clarify the section's expanded applicability to all barber and cosmetology schools; amend subsection (a) to expand its applicability to all barber and cosmetology schools; rephrase subsection (a)(3) for clarity; amend subsection (a)(4) to remove subsection (a)(4)(A) regarding fees for a private beauty culture school and subsection (a)(4)(B) regarding fees for a public beauty culture school, and add text referring to fees required for any barber or cosmetology school; add new subsection (a)(5) to require a school license applicant to meet the health and safety standards; add new subsection (a)(6) to contain text relocated from current subsection (a)(5) regarding financial statements for private beauty schools and amend the text to expand its applicability to all private school license applicants, to require the financial statement to be provided in the format prescribed by the Department, and to require the applicant to demonstrate sufficient financial resources to operate for at least 12 months without relying on student tuition; amend subsection (b) to expand its applicability to all barber and cosmetology schools; amend subsection (c) to expand its applicability to all private barber and cosmetology schools and remove unnecessary language; amend subsection (c)(1) by changing "adequate drinking fountain facilities" to "adequate drinking water"; amend subsection (d) to expand its applicability to all barber and cosmetology schools and remove unnecessary language; amend subsection (d)(1) by removing the requirement for a public school to have an office and a dispensary; and amend subsection (e) to expand its applicability to all barber and cosmetology schools and remove unnecessary language.

The proposed rules amend §83.24, Inactive Status, by amending subsection (a) to rephrase and reorganize the text to include new subsection (a)(1), containing the requirements for submitting an application, and new subsection (a)(2), containing the requirement to pay a fee; amending subsection (b) to expand its applicability to any act of barbering or cosmetology; and rephrasing subsection (d)(1) for clarity.

The proposed rules amend §83.25, License Requirements--Continuing Education. The proposed rules amend subsection (b) to expand its applicability to all practitioner licenses, to remove unnecessary language, and to rephrase its language for clarity; amend subsection (b)(1) to provide consistency in capitalization of terminology; amend subsection (b)(2) to require renewals on or after September 1, 2025, to include completion of one hour of continuing education on human trafficking prevention; add new subsections (b)(2)(A) through (b)(2)(C) to specify the information that must be included in the hour on human trafficking prevention; add new subsection (b)(3) to require the remaining continuing education hours to cover any topics listed in new subsection (h); amend subsection (c) to require continuing education taught before September 1, 2025, to include required information about human trafficking prevention, without a minimum time requirement for the topics; remove current subsection (d), which contained the requirements for renewal of instructor licenses, which were repealed by HB 1560; remove current subsection (e), which contains continuing education requirements that unnecessarily duplicate the requirements in new subsection (b)(2); relabel current subsection (f) to become new subsection (d); reorganize current subsection (g) by relabeling current subsection (g)(1) as new subsection (e) and relabeling current subsection (g)(2) as new subsection (f) and adding a reference to 16 TAC, Chapter 59, for clarity; relabel current subsection (h) to become new subsection (g) and rephrase its language for clarity; relabel current subsection (i) to become new subsection (h); amend new subsection (h)(1) and (h)(2) to provide consistency in capitalization; amend new subsection (h)(3) to rephrase its wording for clarity and to add a reference to the curriculum standards in §83.202; add new subsection (h)(4) to include mental health awareness as an approved topic for continuing education courses; add new subsection (h)(5) to include human trafficking prevention as an approved topic for continuing education, including new subsections (h)(5)(A) through (h)(5)(C), which detail the required information for the topic; relabel current subsection (j) to become new subsection (i); relabel current subsection (k) to become new subsection (j); relabel current subsection (l) to become new subsection (k); amend new subsection (k) to provide alternate continuing education requirements for practitioners who have been licensed for at least 15 years, including new subsection (k)(1) for renewals before September 1, 2025, and new subsection (k)(2) for renewals on or after September 1, 2025; and add new subsection (l) to provide an exemption from continuing education requirements for barber licensees until September 1, 2025.

The proposed rules amend §83.26, Licensing Requirements--Renewals. The proposed rules amend subsection (a)(2) by rephrasing its wording for clarity; amend subsection (b) to expand its applicability to all practitioner licenses; and amend subsection (c) to expand its applicability to barbering.

The proposed rules amend §83.28, Substantial Equivalence or Endorsement and Provisional Licensure. The proposed rules amend the rule title to read "Substantial Equivalence and Provisional Licensure"; amend the body of subsection (a) by removing unnecessary language; rephrase subsection (a)(1) for clarity; amending subsections (a)(4) and (a)(5) to provide grammatical consistency; adding new subsection (a)(6) to provide an age requirement of 17 years for applicants on or after September 1, 2023; remove unnecessary language from subsection (c); amend subsection (d) to remove the exception that prohibited the Department from waiving operator license requirements for the purpose of substantial equivalence licensing; amend subsection (e) to expand its applicability to barbering and cosmetology licenses; amend subsection (f)(1) by adding the requirement for the provisional license application to be submitted in the manner prescribed by the Department, and expanding its applicability to all barber and cosmetology licenses; remove unnecessary language from subsection (f)(2); amend subsection (f)(3) to provide the Department authority to recognize examinations for purposes of provisional licensing; amend subsection (g) to expand its applicability to barbering and remove unnecessary language; amend subsection (h) by removing unnecessary language and adding language allowing the Department to extend the provisional license period if examination results have not been received; amend subsection (i) by removing unnecessary language; amend subsection (j) by expanding its applicability to all barber and cosmetology licenses; and add new subsection (k), which allows an applicant for a class A barber or operator license to substitute documented work experience for required course hours, and provides the maximum allowed rate of substitution per month and the maximum total hours that may be substituted.

The proposed rules amend §83.29 by amending its title to read "Establishment or School Relocation, Change of Ownership, Owner Death or Incompetency"; amending subsection (b) to remove unnecessary language and to extend its exemption to all mobile establishments; relabel current subsection (c) to become new subsection (d); add new subsection (c) to provide the requirements for the relocation of a school; amend new subsection (d) to expand its applicability to schools; and amend subsection (d)(4) to add clarifying language.

The proposed rules repeal current §83.31, "Licenses--License Terms", and add new §83.31, with the same section title, consisting of new subsection (a) to provide a license term of two years for practitioner licenses in new subsection (a)(1) and establishment licenses in new subsection (a)(2); new subsection (b) to provide a license term of one year for school licenses; and new subsection (c) to provide that a student permit does not expire.

The proposed rules amend §83.40 by amending its title to read "Barbering and Cosmetology School Tuition Protection Account"; amending subsection (a) provide consistency with the barbering and cosmetology school tuition protection account established in Occupations Code §1603.3608, as added by HB 1560; amending subsections (a)(1) and (a)(2) to expand their applicability to all private schools; amending subsection (b) to expand its applicability to all private schools, update terminology, and increase the required minimum account balance from $200,000 to $225,000 to provide consistency with Occupations Code §1603.3608(a), as added by HB 1560; amending subsections (d) and (e) to expand their applicability to all private schools; amending subsection (f) by updating terminology and increasing the maximum total claim payment from $10,000 to $35,000 to provide consistency with Occupations Code §1603.3607(c), as added by HB 1560; amending subsections (g) and (h) to expand their applicability to all private schools and update terminology; amending subsection (j) to expand its applicability to all private schools; and amending subsection (k) to expand its applicability to all private schools and update terminology.

The proposed rules repeal current §83.50, "Inspections--General", and add new §83.50, with the same section title. By repealing and replacing this section, the proposed rules effectively amend subsection (a) by replacing its current language with new language requiring schools and establishments to be inspected in accordance with Texas Occupations Code, Chapter 51, and the Department's inspection rules in 16 TAC, Chapter 60; amend subsection (b) by replacing its current language with new language requiring an establishment to provide the Department upon request a list of all independent contractors and all mini-establishment licensees who work in the establishment; amend subsection (c) by replacing its current language with new language providing that the Department will make information available to establishments and schools regarding best practices for risk-reduction techniques; and amend subsection (d) by adding references investigators and investigations.

The proposed rules amend §83.51 by amending its title to read "Initial Inspections--Inspection of Schools Before Operation" to clarify its expanded applicability to all schools; amending subsection (a) to expand its applicability to all schools; amending subsection (b) to expand its applicability to all schools; amending subsection (d) by replacing its current language with new language providing that schools must be inspected in accordance with Texas Occupations Code, Chapter 51, and the Department's inspection rules in 16 TAC, Chapter 60; removing current subsection (e) and relabeling current subsection (f) to become new subsection (e) and amending its language to expand its applicability to all schools and remove its reference to a fee for a reinspection request.

The proposed rules repeal §83.52, Periodic Inspections, to remove requirements for inspections to be conducted within a specified period of time and allow the Department to focus its resources on the risk-based inspections required by Texas Occupations Code §51.211.

The proposed rules repeal §83.54, Corrective Modifications Following Inspection, because the requirements relating to corrective actions are addressed in the Department's procedural rules at 16 TAC, Chapter 60, which apply to all programs administered by the Department.

The proposed rules repeal current §83.65, Advisory Board on Cosmetology, and replace it with proposed new §83.65, Barbering and Cosmetology Advisory Board, to provide consistency with the advisory board established in Occupations Code §1603.051, as amended by HB 1560. The proposed new section consists of new subsection (a), which provides the purpose of the advisory board, and new subsection (b), which provides the composition of the advisory board and the length of terms of its members.

The proposed rules amend §83.70, Responsibilities of Individuals, by amending the section title to read "Responsibilities of Individual Practitioners" to provide clarity; amending subsections (a) through (c) to update terminology for consistency and clarity; removing current subsection (d) to remove requirements relating to booth rental permits, which were repealed by HB 1560; relabeling current subsection (e) to become new subsection (d) and updating its terminology for consistency and clarity; relabeling current subsection (f) to become new subsection (e) and amending its language to require current licenses to be either posted near the licensee's workstation or made available at the establishment reception desk; relabeling current subsection (g) to become new subsection (f) and amending its language to provide the minimum size of the photograph of the licensee that must be attached to the front of a practitioner license or permit, to allow the photograph to be digitally displayed along with an image of the license or permit, and to prohibit the photograph from obscuring any information on the license or permit; relabeling current subsection (h) to become new subsection (g) and updating its terminology for consistency and clarity; relabeling current subsection (i) to become new subsection (h) and updating its terminology for consistency and clarity; relabeling current subsection (j) to become new subsection (i) and amending its text to remove unnecessary language and update terminology for consistency and clarity; and amending current subsection (k) to become new subsection (j) and updating its terminology for consistency and clarity.

The proposed rules amend §83.71, Responsibilities of Beauty Salons, Mini-Salons, Specialty Salons, Dual Shops, Mini-Dual Shops, and Booth Rentals. The proposed rules amend the section title to read "Responsibilities of Establishments" to reflect the section's expanded applicability to all barbering and cosmetology establishments; amend subsection (a) to require each establishment to have the current law and rules book issued by the Department, rather than just a copy of the book; amend subsection (c) to expand its applicability to all establishments and remove the requirement for a booth rental license, which was repealed by HB 1560; amend subsection (d) to expand its applicability to all establishments and update its terminology for consistency; amend subsection (e) to expand its applicability to all mini-establishment license holders and update its terminology for consistency; amend subsection (f) to expand its applicability to all establishments and update its terminology for consistency; amend subsection (g) to expand its applicability to all establishments; amend subsection (g)(1) to clarify that the sink required for each establishment must be "in an area where services are performed"; amend subsection (g)(2) to update its terminology for consistency; amend subsection (h)(1) to expand its applicability to all full-service establishments and mini-establishments and update its terminology for consistency; amend subsection (h)(1)(B) to update its terminology for consistency; amend subsection (h)(1)(C) to improve grammar and to identify the services that, if provided, would require an establishment to have at least one shampoo bowl or would require a mini-establishment to have access to at least one shampoo bowl; amend subsection (h)(2) to expand its applicability to all establishments providing manicure services and update its terminology for consistency and clarity; amend subsection (h)(3) to expand its applicability to all establishments providing esthetician services and update terminology for consistency and clarity; amend subsection (h)(4) to expand its applicability to all establishments providing combination esthetician/manicure services and update terminology for consistency; amend subsection (h)(5) to expand its applicability to all establishments providing eyelash extension services and update terminology for consistency; amend subsection (h)(5)(A) to allow a chair to fulfill the requirement for equipment allowing the consumer to lie completely flat and to rephrase its language for clarity; amend subsections (h)(5)(B) and (h)(5)(C) to provide grammar and punctuation that allows for the addition of new subsection (h)(5)(D), which adds the requirement for "one mirror"; remove current subsection (h)(6) because it addresses requirements for wig salons, which were repealed by HB 1560; relabel current subsection (h)(7) as new subsection (h)(6), expand its applicability to all establishments providing hair weaving services and update terminology for consistency, add a requirement for "one chair dryer or handheld dryer" in new subsection (h)(6)(C), and add new subsection (h)(6)(D) to require at least one shampoo bowl; remove current subsection (h)(8) because it provides requirements applicable to dual shops, which were repealed by HB 1560; remove current subsection (h)(9) because it provides requirements applicable to mini-dual shops, which were repealed by HB 1560; amend subsection (i) to expand its applicability to all practitioners acting as independent contractors; amend subsection (j) to expand its applicability to all practitioners acting as independent contractors; amend subsection (j)(1) to expand its applicability to all independent contractor practitioners in full-service establishments and update terminology for consistency; amend subsection (j)(2) to expand its applicability to all independent contractor practitioners in establishments providing esthetician services and updating its terminology for consistency and grammar; amend subsection (j)(3) to expand its applicability to all independent contractor practitioners in establishments providing manicure services and updating its terminology for consistency and clarity; amend subsection (j)(4) to expand its applicability to all independent contractor practitioners in establishments providing eyelash extension services, to allow a chair to fulfill the requirement for equipment allowing the consumer to lie completely flat, and to add the requirement for a mirror; amend subsection (k) to expand its applicability to all practitioners acting as independent contractors; amend subsection (l) to expand its applicability to all establishments and to change the current requirement to display their most recent inspection report to instead require only that they display a notice that a copy of the inspection report is available upon request; amend subsection (m) to expand its applicability to all licensed establishments and update its statutory references for consistency; add new subsection (n) to impose a duty on establishments to ensure their practitioners are properly licensed; add new subsection (o) to prohibit establishments from performing or offering services outside the scope of their license; add new subsection (p) to provide restrictions on operating multiple establishments or schools on the same premises at the same time, with an exception for mini-establishments and mobile establishments; and add new subsection (q) to require establishments to display a copy of the health and safety rules and to clarify that this requirement may be met by making the law and rules book accessible to all practitioners working in the establishment.

The proposed rules amend §83.72, Responsibilities of Beauty Culture Schools, by amending the section title to read "Responsibilities of Schools" to reflect the section's expanded applicability to all barbering and cosmetology schools; amending subsection (a) to update terminology for consistency and to clarify that each school must have the current law and rules book issued by the Department and not merely a copy of the book; amending subsection (b) to update terminology for consistency; amending subsection (c) by rephrasing language for clarity and updating terminology for consistency; amending subsection (d) to update terminology for clarity; removing current subsection (d) be-

cause it addresses student-instructors, which were repealed by HB 1560; relabeling current subsection (f) to become new subsection (e) and amending its language to remove references to licensed instructors and student-instructors, which were repealed by HB 1560, to require an instructor's physical presence for practical curriculum activities and an instructor's physical presence or participation through distance education for theory curriculum activities, and to update terminology for consistency; relabeling current subsection (g) to become new subsection (f); relabeling current subsection (h) to become new subsection (g) and updating its terminology for clarity; relabeling current subsection (i) to become new subsection (h); relabeling current subsection (j) to become new subsection (i), adding language to require schools to ensure compliance with the subsection's requirements, and updating its phrasing and terminology for clarity and consistency; relabeling current subsection (k) to become new subsection (j) and removing its references to licensed instructors and student-instructors, which were repealed by HB 1560; relabeling current subsection (l) to become new subsection (k) and updating its language to add clarity and correct grammar; relabeling current subsection (m) to become new subsection (l) and updating its language to add clarity; relabeling current subsection (n) to become new subsection (m) and updating its language to improve clarity; relabeling current subsection (o) to become new subsection (n); relabeling current subsection (p) to become new subsection (o); relabeling current subsection (q) to become new subsection (p) and updating its language to improve clarity; removing current subsection (r) to remove the requirement for public schools to submit a student's accrual of 500 hours in math, lab science, and English; relabel current subsection (s) to become new subsection (q) and amend its language to expand its applicability to barbering and cosmetology; relabel current subsection (t) to become new subsection (r) and amend its language to expand its applicability to barbering and cosmetology; relabel current subsection (u) to become new subsection (s); and relabel current subsection (v) to become new subsection (t) and amend its language to remove reference to a licensed instructor, which was repealed by HB 1560. The proposed rules relabel current subsection (w) to become new subsection (u) and amend its language to expand its applicability to all schools and to remove unnecessary language; amend paragraph (4) to remove the requirement to have a dispensary and to add a requirement for the mandatory storage space to be secure; amend paragraphs (6) and (7) to improve grammar and punctuation; add language to paragraph (8) to enumerate the qualitative requirements for equipment that must be provided for each student; relabel current paragraph (8) to become new paragraph (9) and amend its language to expand its applicability to all schools offering the class A barber or operator curriculum standards, to update terminology in subparagraph (E) for consistency, to remove the requirement in subparagraph (F) for the mannequin to include a table or be attached to a styling station, to remove the requirement in subparagraph (H) for the manicure station to have a table, to add a requirement in subparagraph (I) for the chair to recline, to remove current subparagraph (J) and its requirement to have a lighted magnifying glass, and to relabel the remaining subparagraphs accordingly; relabel current paragraph (9) to become new paragraph (10) and amend its language to improve grammar, to remove unnecessary language, to add a requirement in subparagraph (A) for the chair to recline, to remove current subparagraph (J) and its requirement to have a paraffin bath and paraffin wax, and to relabel the remaining subparagraphs accordingly; relabel current paragraph (10) to become new paragraph (11) and amend its language to improve grammar, to remove unnecessary language, to remove the requirement in subparagraph (B) for a manicure station to include a table and add a requirement for its lighting to be sufficient, to remove the requirement in subparagraph (I) for an air brush system, and to relocate the language in current subparagraph (J) to become new subparagraph (I); relabel current paragraph (11) to become new paragraph (12) and amend its language to improve grammar, update cross-references, and remove the requirement to have a wax warmer and paraffin warmer for each service; relabel current paragraph (12) to become new paragraph (13) and amend its language to correct grammar and punctuation, to remove unnecessary language, and to add to subparagraph (A) the ability for a facial chair to meet the requirement for equipment allowing the consumer to lie completely flat; relabel current paragraph (x) to become new paragraph (v) and amending its language to expand its applicability to all schools, to update subparagraph (1) to require schools only to post a notice that their most recent inspection report is available upon request, to update subparagraph (2) by updating statutory references, and to add new subparagraph (3) to add the requirements for the sign reading "SCHOOL--STUDENT PRACTITIONERS" that schools must display to meet the requirements of Occupations Code §1603.2305, as added by HB 1560; add new subsection (w) to provide a cap of 184 hours per month for the hours that a school may provide to a student; and add new subsection (x) to add the requirement for each school to display a copy of the sanitation rules, as required by Occupations Code §1603.357, as added by HB 1560, and to allow for the requirement to be met by making the law and rules book accessible to all students and staff.

The proposed rules amend §83.73, Responsibilities of Students, by rephrasing subsection (b) for clarity.

The proposed rules amend §83.74, Responsibilities--Withdrawal, Termination, Transfer, School Closure. The proposed rules amend subsection (a) to expand its applicability to all schools; amend subsection (b) to provide gender neutrality; amend subsection (d) to expand its applicability to all schools and update references to statute and rule; amend subsection (e) by rephrasing its language for clarity; amend subsection (f) to update a reference to statute; amend subsection (g) to expand its applicability to all out-of-state students; amend subsection (h) to expand its applicability to all barbering and cosmetology courses and remove unnecessary language.

The proposed rules amend §83.77, Remote Service Business Responsibilities. The proposed rules rephrase subsection (a) for clarity and restructure subsection (a) by adding new subsection (a)(1) to require notice of intent to operate a remote service business, adding new subsection (a)(2) to require a permanent mailing address for the remote service business, and adding new subsection (a)(3) to require verification of compliance with applicable statutes and rules. The proposed rules amend subsection (b) by updating terminology for consistency; amend subsection (d) to expand its applicability to barbering services; amend subsection (e) to expand its applicability to barbering services; amend subsection (e)(1) to remove the terms "wigs" and "artificial hairpieces" because the wig specialty certificate was repealed by HB 1560; amend subsection (e)(2) to remove the requirement for a safety razor because class A barber license holders are allowed to shave without a safety razor; amend subsection (e)(3) by removing a comma to correct punctuation; amend subsection (e)(5) by adding a comma to correct punctuation and adding the preposition "a" to correct grammar; amend subsection (g) by updating terminology for consistency;

rephrase subsection (h) for clarity; update terminology in subsection (h)(1) for consistency; remove unnecessary language from subsection (h)(1)(B); correct capitalization in subsection (h)(2)(A); amend subsection (h)(3) by correcting capitalization for clarity and updating terminology for consistency; amend subsection (i) by rephrasing its language for clarity; amend subsection (j) by updating terminology for consistency and correcting grammar for clarity; amend subsection (k) by rephrasing its language for clarity and updating its terminology for consistency; amend subsection (l) by updating its terminology for consistency and correcting its grammar for clarity; amend subsection (m) by updating its language for clarity and correcting its grammar for clarity; and amend subsection (n) by rephrasing its language for clarity.

The proposed rules amend §83.78, Responsibilities of Mobile Shop, by amending its title to read "Responsibilities of Mobile Establishment" to indicate the section's expanded applicability to all mobile establishments. The proposed rules amend subsection (a) by updating terminology to expand its applicability to all mobile establishments and rephrasing its language for clarity; amend subsection (b) by updating terminology to expand its applicability to all mobile establishments, rephrasing its language for clarity, and removing the requirement to notify the Department of a change in physical address; amend subsection (c) by updating terminology to expand its applicability to all mobile establishments and rephrasing its language for clarity; amend subsection (d) by updating terminology to expand its applicability to all mobile establishments, correcting capitalization for clarity, and rewording for clarity; amend subsection (e) by rewording for clarity and updating terminology for consistency; amend subsection (f) by updating terminology to expand its applicability to all mobile establishments and rewording for clarity; amend subsection (g) by updating terminology to expand its applicability to all mobile establishments and rewording for clarity; amend subsection (h) by updating terminology to include all mobile establishments and rewording for clarity; amend subsection (i) by updating terminology for consistency and rewording for clarity; amend subsection (j) by updating terminology to include all mobile establishments, rephrasing for clarity, and removing unnecessary language; amend subsection (k) by updating terminology to include all mobile establishments; amend subsection (l) by updating terminology to include all mobile establishments and all barbering or cosmetology services.

The proposed rules amend §83.80, Fees, by amending the section title to read "Fees (before September 1, 2023)" to indicate the section's provision of fees for the period before September 1, 2023. The proposed rules amend the list of application fees in subsection (a) by amending subsections (a)(2) and (a)(3) to remove the hair weaving specialty certificate from subsection (a)(3) and add hair weaving as a specialty license in subsection (a)(2); removing from subsection (a)(5) the instructor license, which was repealed by HB 1560; removing from subsection (a)(6) the instructor specialty licenses, which were repealed by HB 1560; removing from subsection (a)(9) the booth rental license, which was repealed by HB 1560; removing from subsection (a)(11) the dual shop license, which was repealed by HB 1560; removing from subsection (a)(12) the mini-dual shop permit, which was repealed by HB 1560; and renumbering the remaining list as new subsections (a)(1) through (a)(7). The proposed rules amend the list of renewal fees in subsection (b) by amending subsections (b)(2) and (b)(3) to remove the hair weaving specialty certificate from subsection (b)(3) and add hair weaving as a specialty license in subsection (b)(2); removing from subsection (b)(4) the instructor license, which was repealed by HB 1560; removing from subsection (b)(5) the instructor specialty licenses, which were repealed by HB 1560; removing from subsection (b)(8) the mini-dual shop license, which was repealed by HB 1560; removing from subsection (b)(9) the booth rental license, which was repealed by HB 1560; removing from subsection (b)(11) the dual shop license, which was repealed by HB 1560; and renumbering the remaining list as new subsections (b)(1) through (b)(6). The proposed rules amend subsection (e) by rephrasing for clarity and updating terminology for consistency; amend subsection (g) by removing the requirement for the fee to be paid for each occurrence, because inspections will be conducted on a risk basis rather than a periodic basis; amend subsection (h) by removing unnecessary language; amend subsection (j) by removing unnecessary language; amend subsection (l) by updating terminology for consistency; and add new subsection (m) to explain which rules provide the fees that are required before, on, and after September 1, 2023.

The proposed rules amend §83.90, Administrative Sanctions and Penalties, by updating references to statutes, rewording for clarity, and removing unnecessary language.

The proposed rules amend §83.100, Health and Safety Definitions, by removing an unnecessary use of "shall".

The proposed rules amend §83.101, Health and Safety Standards--Department-Approved Disinfectants. The proposed rules amend subsection (a) to replace all instances of "shall" with "must" for clarity; add clarifying language to subsection (a)(4); and correct a hyphenation in subsection (a)(5). The proposed rules amend subsection (b) to replace all instances of "shall" with "must" for clarity; update terminology in subsection (b)(1) to include all establishments; add a comma in subsection (b)(4) to improve grammar; and amend subsection (b)(5) by adding a comma to improve grammar and updating terminology to include all establishments.

The proposed rules amend §83.102, Health and Safety Standards--General Requirements. The proposed rules amend subsection (a) by updating terminology to clarify which requirements apply only to practitioners, rewording for clarity; and updating terminology to include barbering and cosmetology; amend subsection (b) by updating terminology to clarify which requirements apply only to practitioners; amend subsection (c) by rewording for clarity; amend subsection (d) by rewording for clarity; amend subsection (e) by rewording for clarity; amend subsection (f) by rewording for clarity and updating terminology to include barbering and cosmetology; amend subsection (g) by removing a comma to improve grammar and rewording for clarity; add new subsection (h) to provide requirements for proper disinfection of tools and implements; relabel current subsections (h) through (n) to become new subsections (i) through (o); amend new subsection (i) by updating terminology to include all establishments and schools, rewording for clarity, and updating the standard for how often hair cuttings must be removed; amend new subsection (l) by rewording for clarity; amend new subsection (m) by rewording for clarity; amend new subsection (n) by updating terminology to include all establishments and schools and rewording for clarity; amend new subsection (o) by rewording for clarity.

The proposed rules amend §83.103, Health and Safety Standards--Hair Cutting, Styling, Shaving, and Treatment Services. The proposed rules amend subsection (a) by updating terminology to include all practitioners and rewording for clarity; amend subsection (b) by rewording for clarity; amend subsection (c) by updating terminology to include only implements that are not sin-

gle-use, rewording for clarity, and adding razors and clippers to the list of materials that must be cleaned and disinfected; and amend subsection (d) by correcting grammar and rewording for clarity.

The proposed rules amend §83.104, Health and Safety Standards--Esthetician Services. The proposed rules amend subsection (a) by updating terminology to include all practitioners providing esthetician services and rewording for clarity; amend subsection (b) by rewording for clarity and replacing "to" with "with" to improve grammar; amend subsection (c) by rewording for clarity, updating terminology to include a chair "or bed", and adding the requirement for "non-porous" material to provide a clear standard for ensuring proper disinfection; amend subsection (d) by rewording for clarity; amend subsection (e) by rewording for clarity; amend subsection (f) by rewording for clarity; and amend subsection (g) by rewording for clarity.

The proposed rules amend §83.105, Health and Safety Standards--Temporary Hair Removal Services. The proposed rules amend subsection (a) by updating terminology to include all practitioners providing temporary hair removal services and rewording for clarity; amend subsection (b) by updating terminology to include all practitioners providing temporary hair removal services and rewording for clarity; amend subsection (c) by updating terminology to include all practitioners providing hair removal services and to include services involving the use of wax and rewording for clarity; amend subsection (d) by rewording for clarity; and amend subsection (e) by rewording for clarity.

The proposed rules amend §83.106, Health and Safety Standards--Manicure and Pedicure Services. The proposed rules amend subsection (a) by updating terminology to include all practitioners providing manicure and pedicure services and rewording for clarity; amend subsection (b) by updating terminology to include all practitioners providing manicure and pedicure services and rewording for clarity; amend subsection (c) by rewording for clarity; amend subsection (d) by rewording for clarity; amend subsection (e) by rewording for clarity; amend subsection (f) by rewording for clarity, removing unnecessary language, and amending terminology to include a "high level disinfection chlorine bleach solution", a term defined by §83.100(1)(B); and amend subsection (g) by rewording for clarity.

The proposed rules amend §83.107, Health and Safety Standards--Electric Drill Bits. The proposed rules amend subsection (a) by updating terminology to include all establishments and schools and amend subsections (b), (c), and (d) by rewording for clarity.

The proposed rules amend §83.108, Health and Safety Standards--Foot Spas, Foot Basins, and Spa Liners. The proposed rules amend subsection (a) by updating terminology to include all establishments and schools; amend subsections (b) and (c) by rewording for clarity; amend subsection (c)(2) by updating terminology to include a "high level disinfection chlorine bleach", a term defined in §83.100(1)(B), and removing unnecessary language that repeats the definition; amend subsection (d) by rewording for clarity; amend subsections (d)(1) and (d)(2) by updating terminology to include a "high level disinfection chlorine bleach", a term defined in §83.100(1)(B), and removing unnecessary language that repeats the definition; amend subsections (e), (f), (g), and (j) by rewording for clarity; amend subsection (j)(1) to include all establishments and schools; and amend subsections (k), (l), and (n) by rewording for clarity.

The proposed rules repeal §83.109, "Health and Safety Standards--Wig and Hairpiece Services" because the regulation of wig and hairpiece services was repealed by HB 1560.

The proposed rules amend §83.110, Health and Safety Standards--Hair Weaving Services. The proposed rules amend subsection (a) by updating terminology to include all practitioners providing hair weaving services; amend subsections (a), (b), (c), and (d) by rewording for clarity; and amend subsection (d) by updating terminology to include combs and hair clips.

The proposed rules amend §83.111, Health and Safety Standards--Blood and Body Fluids. The proposed rules amend subsection (a) by rewording for clarity; amend subsections (b) and (c) by updating terminology to include "blood and body fluid cleanup and disinfection chlorine", a term defined by §83.100(1)(C), and remove unnecessary language repeating that definition, and rewording for clarity; and amending subsection (d) by rewording for clarity.

The proposed rules amend §83.112, Health and Safety Standards--Prohibited Products or Practices. The proposed rules amend subsection (a) by updating terminology to include all practitioners and all barbering and cosmetology services and amend subsection (a)(1) by rephrasing for clarity.

The proposed rules amend §83.113, Health and Safety Standards--FDA. The proposed rules amend subsection (a) by updating terminology to include all practitioners and rewording for clarity; amend subsection (b) by replacing "shall" with "will" to improve clarity; and amend subsection (c) by updating terminology to include all practitioners and rewording for clarity.

The proposed rules amend §83.114, Health and Safety Standards--Establishments. The proposed rules amend the section title to read "Health and Safety Standards--Establishments and Schools" to clarify the section's applicability to schools; amend subsection (a) by updating terminology to include schools and rewording for clarity; amend subsection (c) by rewording for clarity; amend subsection (d) by updating terminology to include schools; amend subsection (e) by updating terminology to include schools and rewording for clarity; amend subsection (f) by rewording for clarity; amend subsection (g) by rewording for clarity; amend subsection (h) by rewording for clarity and updating terminology to include schools; and amend subsection (i) by updating terminology to include schools.

The proposed rules amend §83.115, Health and Safety Standards--Eyelash Extension Application Services. The proposed rules amend subsection (a) by updating terminology to include practitioners offering eyelash extension application services and rewording for clarity; amend subsections (b) through (f) by rewording for clarity; amend subsection (g) by updating terminology to include practitioners and rewording for clarity; and amend subsection (h) by rewording for clarity.

The proposed rules amend §83.120, Technical Requirements--Curriculum Standards. The proposed rules amend the section title to read "Technical Requirements--Curriculum Standards (before August 1, 2023)" to indicate the section's applicability; remove current subsection (c) because it contains curriculum requirements for instructor licenses, which were repealed by HB 1560; amend subsection (d) by removing current subsections (d)(2)(H) and (d)(2)(I), which address instructor courses repealed by HB 1560, and relabeling current subsection (d) to become new subsection (c); amend subsection (e) by removing subsections (e)(2)(F) and (e)(2)(G), which address instructor courses repealed by HB 1560, relabeling subsection

(e) to become new subsection (d), and rewording for clarity; and add new subsection (e) to specify which rule sections provide the curriculum standards in effect before, on, and after August 1, 2023.

The proposed rules add new §83.200, "License Requirements--Individuals (on or after September 1, 2023)", to provide the license requirements in effect for individual practitioner licenses on or after September 1, 2023. The proposed rules add new subsection (a) to provide the practitioner license eligibility requirements, including new subsection (a)(1) to provide application requirement; new subsection (a)(2) to provide fee payment requirements; new subsection (a)(3) to provide a minimum age requirement of 17 years; new subsection (a)(4) to provide requirements for completion of hours of instruction; new subsection (a)(5) to provide examination requirements; new subsection (a)(6) to provide requirements related to prohibited actions; and new subsection (a)(7) to require compliance with other applicable statutes and rules. The proposed rules add new subsection (b) to provide the eligibility requirements for a person who holds both an esthetician license and a manicurist license to obtain an esthetician/manicurist specialty license; add new subsection (c) to provide the eligibility requirements for a person who holds both a hair weaving specialist license and an esthetician license to obtain a hair weaving specialist/esthetician license; add new subsection (d) to provide the eligibility requirements for a student permit, including new subsection (d)(1) to provide application requirements and new subsection (d)(2) to provide fee requirements; and add new subsection (e) to explain that §83.200 provides the requirements for practitioner license applications received on or after September 1, 2023.

The proposed rules add new §83.201, "Fees (on or after September 1, 2023)", to provide the list of fees in effect on or after September 1, 2023. The proposed rules add new subsection (a) to provide the application fees for the new license types, including new subsection (a)(1) for class A barber licenses and operator licenses; new subsection (a)(2) for specialty practitioner licenses; new subsection (a)(3) for full-service establishment licenses; new subsection (a)(4) for specialty establishment licenses; new subsection (a)(5) for mini-establishment licenses; new subsection (a)(6) for mobile establishment licenses; new subsection (a)(7) for school licenses; and new subsection (a)(8) for student permits. The proposed rules add new subsection (b) to provide the renewal fees for each new license type, including new subsection (b)(1) for the class A barber license and operator License; new subsection (b)(2) for specialty practitioner licenses; new subsection (b)(3) for full-service establishment licenses; new subsection (b)(4) for specialty establishment licenses; new subsection (b)(5) for mini-establishment licenses; new subsection (b)(6) for mobile establishment licenses; and new subsection (b)(7) for school licenses. The proposed rules add new subsection (c) to provide the fee for a license granted through substantial equivalence; new subsection (d) to provide the fees relating to inactive license status, including new subsection (d)(1) for renewal of a license on inactive status and new subsection (d)(2) for a change from inactive status to active status; add new subsection (e) to provide the fee for a revised or duplicate license; add new subsection (f) to provide the fee for the law and rule book; add new subsection (g) to provide the fee for school inspections; add new subsection (h) to provide the fee for verification of a license to other states; add new subsection (i) to provide the student transcript fee; add new subsection (j) to address late renewal fees; add new subsection (k) to explain that fees are nonrefundable; add new subsection (l) to explain that the law and rule book fee is included in the application and renewal fees; and add new subsection (m) to explain that §83.201 provides the fees that are in effect on or after September 1, 2023.

The proposed rules add new §83.202, "Technical Requirements--Curriculum Standards (on or after August 1, 2023)" to provide the curriculum standards for practitioner licenses in effect on or after August 1, 2023. The proposed rules add new subsection (a) to provide the standards for the cosmetology operator and class A barber curricula, including new subsection (a)(1) to provide the required subjects and hours of theory; new subsection (a)(2) to provide the required subjects and hours of practice; new subsection (a)(3) to provide the required subjects and hours of specialty practice for the operator curriculum; and new subsection (a)(4) to provide the required subjects and hours of specialty practice for the class A barber curriculum. The proposed rules add new subsection (b) to provide the standards for the class A barber to cosmetology operator curriculum, including new subsection (b)(1) to provide the required subjects and hours of theory, and new subsection (b)(2) to provide the required subjects and hours of specialty practice. The proposed rules add new subsection (c) to provide the standards for the cosmetology operator to class A barber curriculum, including new subsection (c)(1) to provide the required subjects and hours of theory, and new subsection (c)(2) to provide the required subjects and hours of specialty practice. The proposed rules add new subsection (d) to provide the standards for specialist curricula, including new subsection (d)(1) to provide the standards for the esthetician curriculum, consisting of new subsection (d)(1)(A) for the required subjects and hours of theory, new subsection (d)(1)(B) for the required subjects and hours of practice, and new subsection (d)(1)(C) for the required subjects and hours of specialty practice; new subsection (d)(2) to provide the standards for the manicurist curriculum, consisting of new subsection (d)(2)(A) for the required subjects and hours of theory, new subsection (d)(2)(B) for the required subjects and hours of practice, new subsection (d)(2)(C) for the required subjects and hours of specialty practice; new subsection (d)(3) to provide the standards for the manicurist/esthetician curriculum, consisting of new subsection (d)(3)(A) for the required subjects and hours of theory, new subsection (d)(3)(B) for the required subjects and hours of specialty manicure practice, and new subsection (d)(3)(C) for the required subjects and hours of specialty esthetician practice; new subsection (d)(4) to provide the standards for the eyelash extension specialist curriculum, including new subsection (d)(4)(A) to provide the required subjects and hours of theory, and new subsection (d)(4)(B) to provide the required subjects and hours of specialty practice; new subsection (d)(5) to provide the standards for the hair weaving specialist curriculum, including new subsection (d)(5)(A) for theory hours and new subsection (d)(5)(B) for specialty practice hours; and new subsection (d)(6) to provide the standards for the hair weaving specialist/esthetician curriculum, including new subsection (d)(6)(A) for theory hours, new subsection (d)(6)(B) for specialty hair weaving practice hours, and new subsection (d)(6)(C) for specialty esthetician practice hours. The proposed rules add new subsection (e) to provide the standards for distance education, including new subsection (e)(1) to provide a limit on the designation of theory hours and new subsection (e)(2) to provide limits on distance education hours for each course, including new subsection (e)(2)(A) for the cosmetology operator course, new subsection (e)(2)(B) for the class A barber course, new subsection (e)(2)(C) for the class A barber to cosmetology operator course, new subsection (e)(2)(D) for the cosmetology operator to class A barber course, new subsection

(e)(2)(E) for the manicurist course, new subsection (e)(2)(F) for the esthetician course, new subsection (e)(2)(G) for the esthetician/manicurist course, new subsection (e)(2)(H) for the eyelash extension specialist course, new subsection (e)(2)(I) for the hair weaving specialist course, and new subsection (e)(2)(J) for the hair weaving specialist/esthetician course. The proposed rules add new subsection (f) to provide the curriculum standards relating to field trips, including new subsection (f)(1) to require compliance with the maximum field trip hours specified for each course; new subsection (f)(2) to provide the maximum field trip hours for each course, including new subsection (f)(2)(A) for the cosmetology operator course, new subsection (f)(2)(B) for the class A barber course, new subsection (f)(2)(C) for the manicurist course, new subsection (f)(2)(D) for the esthetician course, new subsection (f)(2)(E) for the esthetician/manicurist course, new subsection (f)(2)(F) for the eyelash extension specialist course, new subsection (f)(2)(G) for the hair weaving specialist course, and new subsection (f)(2)(H) for the hair weaving specialist/esthetician course; new subsection (f)(3) to provide the supervision and instructor-student ratio requirements for field trips; new subsection (f)(4) to provide documentation requirements for field trips; new subsection (f)(5) to prohibit course hours from being granted for travel; and new subsection (f)(6) to explain that field trips are not required to be pre-approved by the Department. The proposed rules add new subsection (g) to allow students previously enrolled in a 1,200-hour manicurist/esthetician program to transfer certain hours to an 800-hour manicurist/esthetician program, and new subsection (h) to explain that §83.202 provides the curriculum standards that are in effect on or after August 1, 2023.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state government as a result of enforcing or administering the proposed rules. The overall workload for the Department will not change significantly, and the license holder population, and tasks associated with that population, will remain approximately the same.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there will be a loss in revenue to state government, consisting of a total loss of $5,290 in the first year and a total loss of $20,275 per year in the second, third, fourth, and fifth years. These losses will result from two sets of changes in the proposed rules: 1) the removal of instructor licenses and their associated fees; and 2) the transition to the new consolidated license types and their associated fees on September 1, 2023. The removal of instructor licenses and their associated fees will result in a loss of $5,290 in the first year and a loss of $7,465 per year in the second, third, fourth, and fifth years. The transition to the new consolidated license types will result in no effect in the first year and a loss of $12,810 per year in the second, third, fourth, and fifth years.

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

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there will be additional estimated costs to local governments in an aggregate amount of $17,080 per year in the second, third, fourth, and fifth years. Local governments who provide funding for holders of public secondary school licenses and public postsecondary school licenses will experience a fee increase of $80 for each new license and license renewal when the consolidated license types take effect on September 1, 202; however, those schools currently holding two separate school licenses for barbering and cosmetology will benefit from instead having to obtain only one school license to teach both barbering and cosmetology.

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

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, the public will benefit in multiple ways. Barbering and cosmetology establishments will need to hold only one establishment license to offer all barbering and cosmetology services, which will result in establishments paying less in fees to offer more services and could result in establishments hiring more employees and increasing revenues. Barbering and cosmetology schools will need to hold only one school license to teach courses for all license types, which will result in schools paying less in fees to offer more courses and could result in schools enrolling more students and increasing revenues. Class A Barber students and Cosmetology Operator students will be able to attend the same courses together for 700 hours of the 1,000-hour curricula, which will save schools money by removing the necessity to duplicate the same courses of instruction for different students. The removal of instructor licenses will allow schools to determine the qualifications for the individuals they hire to teach courses and will increase the population of potential employees to hire as teachers, with fewer limitations on hiring. The public will also benefit from increased safety resulting from barbering practitioners being required to complete continuing education hours upon license renewal, which will allow them to be informed of changes and improvements in occupations and health standards, updates to laws and rules, and instruction on human-trafficking awareness.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there will be additional costs to persons who are required to comply with the proposed rules. Under the new consolidated license structure, applicants for barber specialty licenses and renewals will pay $20 more per two-year license term when the licenses convert to specialty practitioner licenses; applicants for barber shop licenses and renewals will pay $18 more per two-year license term when the licenses convert to establishment licenses; applicants for barber specialty shop licenses and renewals will pay $28 more per two-year license term when the licenses convert to specialty establishment licenses; applicants for renewal of cosmetology salon licenses will pay $9 more per two-year license term when the licenses convert to establishment licenses; applicants for renewal of cosmetology specialty salon licenses will pay $9 more per two-year license term when the licenses convert to specialty establishment licenses; applicants for mini-barber-

shop or mini-salon licenses and renewals will pay $10 more per two-year license term when the licenses convert to mini-establishment licenses; applicants for mobile barbershop and mobile barber specialty shop licenses will pay $18 more per two-year license term when the licenses convert to mobile establishment licenses; applicants for renewal of mobile cosmetology salon and mobile cosmetology specialty salon licenses will pay $9 more per two-year license term when the licenses convert to mobile establishment licenses; and applicants for barber school licenses and beauty culture school licenses and renewals will pay $80 more per two-year license term when the licenses convert to school licenses.

Some license holders could experience increased costs associated with compliance with new requirements and responsibilities for individuals, establishments, and schools relating to buildings, signage, furnishings, equipment, and other items; however, any such costs will vary with each license holder and the method used to obtain compliance. Schools may experience increased costs associated with making changes to their course curricula to meet the updated curriculum standards. Providers of continuing education courses may experience increased costs associated with making changes to their courses to match new continuing education requirements. Holders of barber practitioner licenses may experience increased costs associated with new continuing education requirements.

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

Mr. Couvillon has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Although many small business and micro-business license holders will experience costs associated with increased license fees or compliance with new requirements, those costs are not anticipated to create an adverse economic effect, and many of those costs may be offset by other cost savings or revenue increases for those businesses resulting from the proposed rules. Because the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

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

The proposed rules have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government; however, the proposed rules fall under the exception for rules that are necessary to protect the health, safety, and welfare of the residents of this state under §2001.0045(c)(6) and the exception for rules that are necessary to implement legislation under §2001.0045(c)(9). Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

4. The proposed rules require an increase or decrease in fees paid to the agency. To align the fees for barbering and cosmetology under the new consolidated license structure, some fees paid to the Department will increase and some will decrease, but the net effect will be a decrease in fees paid to the Department.

5. The proposed rules create a new regulation. The proposed rules create new regulations as necessary to harmonize the licensing and regulation of barbering and cosmetology under the consolidated program created by HB 1560.

6. The proposed rules expand, limit, or repeal an existing regulation. The proposed rules modify regulations as necessary to harmonize the licensing and regulation of barbering and cosmetology under the consolidated program created by HB 1560. The proposed rules repeal regulations relating to instructor licenses, wig-related licenses and services, and dual establishment licenses.

7. The proposed rules increase or decrease the number of individuals subject to the rules' applicability. The proposed rules increase the number of individuals subject to 16 TAC, Chapter 83, by making the rule chapter applicable to barber licensees in accordance with the consolidation of the barbering and cosmetology programs provided by HB 1560. The proposed rules decrease the number of individuals subject to Chapter 83 by repealing wig-related licenses.

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

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

16 TAC §§83.1, 83.2, 83.10, 83.20 - 83.26, 83.28, 83.29, 83.31, 83.40, 83.50, 83.51, 83.65, 83.70 - 83.74, 83.77, 83.78, 83.80, 83.90, 83.100 - 83.108, 83.110 - 83.115, 83.120, 83.200 - 83.202

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 1603, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these

chapters and any other law establishing a program regulated by the Department. The proposed rules are also proposed under former Texas Occupations Code, Chapters 1601 and 1602, which were repealed by HB 1560, Article 3, Section 3.33, but remain in effect by authority of the transition provisions in HB 1560, Article 3, Sections 3.34-3.42. The proposed rules are also proposed under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or the holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 1603. No other statutes, articles, or codes are affected by the proposed rules.

§83.1. Authority.

These rules are promulgated under the authority of the Texas Occupations Code, Chapters 51[, ~~1602~~] and 1603, and House Bill 1560, Article 3, 87th Legislature, Regular Session (2021).

§83.2. Transition Provisions.

(a) Hair weaving specialty certificate. A person who holds a current and unexpired hair weaving specialty certificate issued under Texas Occupations Code, Chapter 1602, and this chapter, as those chapters existed on August 31, 2021, may perform the services described by Texas Occupations Code §1603.0011(a)(9) until the expiration of the existing certificate or until a replacement license is issued under this chapter by the department.

(b) Barbering specialty licenses. Notwithstanding §83.20 of this chapter, a person who holds a current and unexpired license to practice the following barbering specialties may perform the following services until the expiration of the existing license or until a replacement license is issued under this chapter by the department. The department will assess the applicable renewal fee based upon the replacement license type for which each barbering specialty is eligible under this chapter.

(1) Barber technician license. A person holding a barber technician license issued under Texas Occupations Code, Chapter 1601, and 16 Texas Administrative Code, Chapter 82, as those chapters existed on August 31, 2021, may perform any services described by Texas Occupations Code §1603.0011(a)(3)-(6) or (c), and is eligible for an esthetician license issued under this chapter.

(2) Manicurist license. A person holding a manicurist license issued under Texas Occupations Code, Chapter 1601, and 16 Texas Administrative Code, Chapter 82, as those chapters existed on August 31, 2021, may perform any services described by Texas Occupations Code §1603.0011(a)(7)-(8), and is eligible for a manicurist license issued under this chapter.

(3) Barber technician/manicurist specialty license. A person holding a barber technician/manicurist specialty license issued under Texas Occupations Code, Chapter 1601, and 16 Texas Administrative Code, Chapter 82, as those chapters existed on August 31, 2021, may perform any services described by Texas Occupations Code §1603.0011(a)(3)-(8) or (c), and is eligible for a manicurist/esthetician license issued under this chapter.

(4) Barber technician/hair weaving specialty license. A person holding a barber technician/hair weaving specialty license issued under Texas Occupations Code, Chapter 1601, and 16 Texas Administrative Code, Chapter 82, as those chapters existed on August 31, 2021, may perform any services described by Texas Occupations Code §1603.0011(a)(3)-(6), (a)(9), or (c), and is eligible for a hair weaving specialist/esthetician license issued under this chapter.

(5) Hair weaving specialty certificate of registration. A person holding a hair weaving specialty certificate of registration issued Texas Occupations Code, Chapter 1601, and 16 Texas Administrative Code, Chapter 82, as those chapters existed on August 31, 2021, may perform any services described by Texas Occupations Code §1603.0011(a)(9), and is eligible for a hair weaving license issued under this chapter.

(c) Instruction by licensed individual. A person who holds a current and unexpired license, certificate, or registration issued under Texas Occupations Code, Chapters 1601 and 1602, and 16 Texas Administrative Code, Chapters 82 and 83, as those chapters existed on August 31, 2021, may provide instruction and be employed as an instructor for the acts of barbering or cosmetology for which the person holds the appropriate license, certificate, or registration.

(d) Barber schools exempt. Notwithstanding §83.72 of this chapter, a person or entity who holds a current and unexpired barber school permit issued under Texas Occupations Code, Chapter 1601, and 16 Texas Administrative Code, Chapter 82, as those chapters existed on August 31, 2021, is exempt from the requirement in §83.72(u) for the school to have a classroom separated from the laboratory area by walls extending to the ceiling. This exemption remains in effect until the school's license or permit expires beyond the 18 months allowed for late renewal, or until the school premises is expanded or relocated. The school is eligible for a private or public school license issued under this chapter.

(e) Department approval of school instruction. On or after September 1, 2023, a person or entity who holds a current and unexpired school license or permit issued under Texas Occupations Code, Chapter 1601 or 1602, and 16 Texas Administrative Code, Chapter 82 or 83, as those chapters existed on August 31, 2021, may apply for approval by the department to provide instruction in any barbering or cosmetology service described by Texas Occupations Code §1603.0011. The department must assess the applicable renewal fee for a school license issued under this chapter.

(1) Before September 1, 2023:

(A) Barber schools may apply for approval by the department to provide instruction in barbering services; and

(B) Beauty culture schools may apply for approval by the department to provide instruction in cosmetology services.

(2) On or after September 1, 2023, all schools may apply for approval by the department to provide instruction in any barbering or cosmetology service.

(f) Establishment licenses and permits. Notwithstanding §83.22 of this chapter, a person or entity holding any of the following establishment licenses may provide the following services until the expiration of their existing license or until they are issued a replacement license under this chapter by the department. The department will assess the applicable renewal fee based upon the license type for which the licensee is eligible under this chapter.

(1) Barbershop permit. A person or entity holding a barbershop permit issued under Texas Occupations Code, Chapter 1601, and 16 Texas Administrative Code, Chapter 82, as those chapters existed on August 31, 2021, may provide any services described by Texas Occupations Code §1603.0011(a)-(c), and is eligible for a full-service establishment license issued under this chapter.

(2) Beauty shop license. A person or entity holding a beauty shop license issued under Texas Occupations Code, Chapter

1602, and 16 Texas Administrative Code, Chapter 83, as those chapters existed on August 31, 2021, may provide any services described by Texas Occupations Code §1603.0011(a)-(c), and is eligible for a full-service establishment license issued under this chapter.

(3) Dual shop license. A person or entity holding a dual shop license issued under Texas Occupations Code, Chapter 1603, and 16 Texas Administrative Code, Chapter 82 or 83, as those chapters existed on August 31, 2021, may provide any services described by Texas Occupations Code §1603.0011(a)-(c), and is eligible for a full-service establishment license issued under this chapter.

(4) Manicurist specialty shop permit. A person or entity holding a barber manicurist specialty shop permit issued under Texas Occupations Code, Chapter 1601, and 16 Texas Administrative Code, Chapter 82, as those chapters existed on August 31, 2021, may provide any services described by Texas Occupations Code §1603.0011(a)(7) or (8), and is eligible for a manicurist specialty establishment license issued under this chapter.

(5) Hair weaving specialty shop permit. A person or entity holding a barber hair weaving specialty shop permit issued under Texas Occupations Code, Chapter 1601, and 16 Texas Administrative Code, Chapter 82, as those chapters existed on August 31, 2021, may provide any services described by Texas Occupations Code §1603.0011(a)(9), and is eligible for a hair weaving specialty establishment license issued under this chapter.

(6) Mini or mobile license. A person or entity holding a mini or mobile license, issued under Texas Occupations Code, Chapter 1603, and 16 Texas Administrative Code, Chapter 82 or 83, as those chapters existed on August 31, 2021, may provide any services described by Texas Occupations Code §1603.0011(a)-(c). The license holder is eligible for a mini or mobile establishment license, as appropriate, issued under this chapter.

(g) In this chapter, a reference to a license issued under the Act also refers to the corresponding license type issued under Texas Occupations Code, Chapter 1601 or 1602, and 16 Texas Administrative Code, Chapter 82 or 83, as those chapters existed on August 31, 2021, as identified in this section.

§83.10. Definitions.

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

(1) Act--Texas Occupations Code Chapter [~~, Chapters 1602 and~~] 1603.

(2) Barbering--The services described by §1603.0011(a) and (b) of the Act.

[~~(2) Beauty Culture School--A cosmetology school, public or private that is subject to regulation under the Act.~~]

(3) Board--The Barbering and Cosmetology Advisory Board [~~Advisory Board on Cosmetology~~].

(4) Class A Barber--A person who holds a class A barber license and who is authorized to perform any barbering service under Texas Occupations Code §1603.0011(a) and (b).

[~~(4) Booth rental license--A license issued or renewed to an applicant the same time the applicant is issued one of the following license types: operator, manicurist, esthetician, esthetician/manicurist, eyelash extension specialist, hair weaver, wig specialist, instructor, or specialty instructor, which allows the holder to lease space on the premises of a beauty shop, specialty shop, mini-salon, dual shop, or mini-dual shop to engage in the practice of cosmetology as an independent contractor.~~]

[~~(5) Department--The Texas Department of Licensing and Regulation.~~]

(5) [~~(6)~~] Commission--The Texas Commission of Licensing and Regulation.

(6) [~~(7)~~] Common Area--An area within an [~~a cosmetology~~] establishment or school which contains equipment and facilities available for use by all persons who practice barbering or cosmetology on the premises under a license[~~, certificate~~] or permit issued under this chapter or Texas Occupations Code, Chapter 1603.

(7) Cosmetology--The services described by §1603.0011(a) and (c) of the Act.

(8) Department--The Texas Department of Licensing and Regulation.

[~~(8) Cosmetology establishment--A beauty salon, specialty salon, mini-salon, dual shop, mini-dual shop, mobile shop, or beauty culture school, public or private, that is subject to regulation under the Act.~~]

(9) Digital Network--Any online-enabled application, Internet website, or system offered or used by a remote service business that allows a client to arrange for a digitally prearranged remote service.

(10) Digitally Prearranged Remote Service--A barbering or cosmetology service performed for compensation by a person holding a license [~~, certificate of registration, or permit~~] under [~~Texas Occupations Code, Chapter 1601, or 1602, or~~] this chapter that is:

(A) prearranged through a digital network; and

(B) performed at a location other than an establishment [~~a place of business that is licensed or permitted under Texas Occupations Code, Chapter 1601, 1602, or 1603~~].

(11) Distance Education--A formal instructional process in which the student and teacher are separated by physical distance and a variety of communication technologies are used to deliver instruction in theory to the student. Courses taught by distance education do not satisfy the requirements of the practical portion of the course curriculum standards.

(12) Establishment--A place licensed under Subchapter E-2 of the Act where barbering or cosmetology is practiced. This term includes mini-establishments and mobile establishments, but does not include public or private schools.

[~~(12) Dual Shop--A shop owned, operated, or managed by a person holding a dual barber and beauty shop license issued under Texas Occupations Code, Chapter 1603.~~]

[~~(13) Eyelash Extension Application--The process of applying and removing a semi-permanent, thread-like, natural or synthetic single fiber to an eyelash, including cleansing of the eye area and lashes prior to applying and after removing extensions.~~]

[~~(14) Eyelash Extension Specialist--A person who holds a specialty license and who is authorized to practice the service defined in Texas Occupations Code §1602.002(a)(10).~~]

(13) [~~(15)~~] Esthetician--A person who holds a specialty license and who is authorized to practice the services defined in Texas Occupations Code §1603.0011(a)(3)-(6), and (c) [~~§1602.002(a)(4) - (7) and (10)~~]. The term esthetician in this chapter includes the term facialist.

(14) [~~(16)~~] Esthetician/Manicurist--A person who holds a specialty license and who is authorized to practice the [~~An estheti-~~

~~cian/manicurist may perform only those~~] services defined in Texas Occupations Code §1603.0011(a)(3)-(8), and (c) [~~§1602.002(a)(4) - (10)~~]. An esthetician/manicurist may also be known as a "manicurist/esthetician."

(15) Executive Director--The executive director of the Texas Department of Licensing and Regulation.

(16) Eyelash Extension Application--The process of applying and removing a semi-permanent, thread-like, natural or synthetic single fiber to an eyelash, including cleansing of the eye area and lashes prior to applying and after removing extensions.

(17) Eyelash Extension Specialist--A person who holds a specialty license and who is authorized to practice the service defined in Texas Occupations Code §1603.0011(c).

(18) Full-service Establishment--An establishment authorized to perform all services defined as barbering or all services defined as cosmetology under the Act.

(19) [~~(17)~~] Guest Presenter--A person who possesses subject matter knowledge in specific curriculum topics and who has the teaching ability necessary to impart the information to cosmetology students. Instruction is limited to the presenter's area of expertise and an [~~a licensed~~] instructor must be present during the classroom session in order for students to earn hours.

(20) [~~(18)~~] Hair weaving specialist [~~weaver~~]--A person who holds a hair weaving specialty license [~~certificate~~] and who is authorized to practice the services [~~may perform only the practice of cosmetology~~] defined in Texas Occupations Code §1603.0011(a)(9) [~~§1602.002(a)(11)~~].

(21) Hair weaving specialist/esthetician--A person who holds a hair weaving specialist/esthetician specialty license and who is authorized to practice the services defined in Texas Occupations Code §1603.0011(a)(3)-(6), (9), and (c). A hair weaving specialist/esthetician may also be known as an "esthetician/hair weaving specialist."

(22) [~~(19)~~] Instructor--An individual who holds a license issued by the department under Subchapter E-1 of the Act to perform the acts of barbering or cosmetology for which the person will provide instruction at a school licensed under this chapter [~~authorized by the department to perform or offer instruction in any act or practice of cosmetology under Texas Occupations Code,~~ §1602.002].

(23) [~~(20)~~] Law and Rules Book--A publication prepared and issued in a format prescribed by the department containing Texas Occupations Code Chapter [~~, Chapters 1602 and~~] 1603, and 16 Texas Administrative Code Chapter 83.

(24) [~~(21)~~] License--A [~~department-issued~~] permit, certificate, approval, registration, or other similar permission issued by the department [~~required~~] under Texas Occupations Code, Chapter 1601, 1602, or 1603. The term does not include a student permit.

(25) [~~(22)~~] License by substantial equivalence--A process that permits a barbering or cosmetology license holder from another jurisdiction or foreign country to obtain a Texas barbering or cosmetology license without repeating barbering or cosmetology education or examination license requirements.

(26) [~~(23)~~] Manicurist--A person who holds a manicurist specialty license and who is authorized to practice the [~~may perform only those~~] services defined in Texas Occupations Code §1603.0011(a)(7)-(8) [~~§1602.002(a)(8) and (9)~~].

(27) [~~(24)~~] Mini-Establishment [~~Mini-Salon~~]--A barbering or cosmetology establishment in which a person practices barbering or cosmetology under a license [~~, certificate or permit~~] issued under this chapter and which consists of a room or suite of rooms that is one of a number of connected establishments in a single premises that open onto a common hallway or common area.

[~~(25) Mini-Dual Shop--A shop owned, operated, or managed by a person meeting the requirements of both a mini-barbershop and mini-beauty shop license under Texas Occupations Code §1603.207.~~]

(28) [~~(26)~~] Mini-Establishment [~~Mini-Salon~~] Licensee--A person or entity that holds a license for a mini-establishment [~~mini-salon or mini-dual shop~~]. The mini-establishment [~~mini-salon~~] licensee must [~~shall~~] be responsible for all requirements under the Act and this chapter [~~rules under Texas Occupations Code, Chapters 1601, 1602, and 1603, and 16 TAC Chapters 82 and 83~~] for the mini-establishment [~~mini-salon or mini-dual shop~~].

(29) [~~(27)~~] Mobile Establishment [~~Mobile Shop~~]--An establishment or specialty establishment [~~A beauty salon, specialty salon, or dual shop~~] that is operated in a self-contained, self-supporting, enclosed mobile unit.

(30) [~~(28)~~] Operator--A person who holds a cosmetology operator license and who is authorized to [~~An individual authorized by the department to~~] perform any [~~act or practice of~~] cosmetology service under Texas Occupations Code §1603.0011(a) and (c)[~~, §1602.002~~].

(31) Practitioner--A person holding any individual practitioner license issued under Subchapter E-1 of the Act to perform barbering or cosmetology services.

(32) [~~(29)~~] Preparation--A substance used to beautify a person's face, neck or arms or to temporarily remove superfluous hair from a person's body including but not limited to antiseptics, tonics, lotions, powders, oils, clays, creams, sugars, waxes and/or chemicals.

(33) Private School--A private postsecondary school licensed under Subchapter E-3 of the Act that offers instruction in any barbering or cosmetology service.

(34) [~~(30)~~] Provisional license--A license that allows a person to practice barbering or cosmetology in Texas pending the department's approval or denial of that person's application for licensure by substantial equivalence.

(35) Public School--A public secondary or postsecondary school licensed under Subchapter E-3 of the Act that offers instruction in any barbering or cosmetology service.

(36) [~~(31)~~] Remote Service Business--A corporation, partnership, sole proprietorship, or other entity that, for compensation, enables a client to schedule a digitally prearranged remote service with a person holding a license[~~, certificate of registration, or permit~~] under Subchapter E-1 of the Act [~~Texas Occupations Code, Chapters 1601, 1602, or 1603~~].

(37) Safety Razor--A razor that is fitted with a guard close to the cutting edge of the razor that is intended to prevent the razor from cutting too deeply and reduces the risk and incidence of accidental cuts.

(38) School--A public school or private school licensed under Subchapter E-3 of the Act that offers instruction in any barbering or cosmetology service.

(39) [~~(32)~~] Self-Contained--Containing within itself all that is necessary to be able to operate without connecting to outside utilities such as water and electricity.

[~~(33) Safety Razor--A razor that is fitted with a guard close to the cutting edge of the razor that is intended to prevent the razor~~

from cutting too deeply and reduces the risk and incidence of accidental cuts.]

(40) [(34)] Special Event--An event of cultural, social, or religious significance justifying off-site provision of barbering or cosmetology services, including [Includes] weddings, quinceaneras, pageants, proms, debutante balls, birthday parties, religious and cultural ceremonies, and on-stage performances.

(41) Specialty Establishment--An establishment in which only services defined in Texas Occupations Code §1603.0011(a)(3)-(9) and (c) are performed. Specialty establishments may only perform the services for which the establishment is licensed.

(42) [(35)] Specialty Instructor--An individual acting as an instructor who holds a practitioner license that is not class A barber or cosmetology operator [authorized by the department to perform or offer instruction in an act or practice of cosmetology limited to Texas Occupations Code, §1602.002(a)(2), (4), (5), (6), (7), (8), (9), (10), and (11)].

[(36) Specialty Salon or Specialty Shop-- A cosmetology establishment in which only the practice of cosmetology as defined in Texas Occupations Code, §1602.002(a)(2), (4), (5), (6), (7), (8), (9), (10), or (11) is performed. Specialty salons may only perform the act or practice of cosmetology in which the salon is licensed.]

(43) [(37)] Student Permit--A permit issued by the department under this chapter to a student enrolled in a [cosmetology] school which states the student's name and the name of the school.

(44) [(38)] Tweezing Technique--Any type of temporary hair removal procedure involving the extraction of hair from the hair follicle by use of, but not limited to, an instrument, appliance or implement made of metal, plastic, or other material.

(45) [(39)] Weaving--The process of attaching, by any method, commercial hair (hair pieces, hair extensions) to a client's hair and/or scalp. Weaving is also known as hair integration or hair intensification.

(46) [(40)] Wet disinfectant soaking container--A container with a cover to prevent contamination of the disinfectant solution and of a sufficient size such that the objects to be disinfected may be completely immersed in the disinfectant solution.

[(41) Wig Specialist--A person who holds a wig specialty certificate and who may perform only the practice of cosmetology defined in Texas Occupations Code §1602.002(a)(2).]

§83.20. License Requirements--Individuals (before September 1, 2023).

(a) To be eligible for an operator license, an applicant must:

(1) submit a completed application in the manner prescribed by the department [on a department-approved form];

(2) pay the applicable fee required under §83.80;

(3) be at least 17 years of age;

(4) have obtained a high school diploma, or the equivalent of a high school diploma, or have passed a valid examination administered by a certified testing agency that measures the person's ability to benefit from training;

(5) have completed the following hours of cosmetology instruction at a licensed beauty culture school either:

(A) 1,000 hours of instruction in a beauty culture school; or

[(B) 1,000 hours of instruction in beauty culture courses and 500 hours of related high school courses prescribed by the department in a vocational or career and technical cosmetology program in a public school; or]

(B) [(C)] 300 hours of instruction in cosmetology through a commission-approved training program in a beauty culture school and hold an active Class A barber certificate; and

(6) pass a written and practical examination required under §83.21.

(b) To be eligible for an esthetician, manicurist, or esthetician/manicurist specialty license, an applicant must:

(1) submit a completed application on a department-approved form;

(2) pay the required fee under §83.80;

(3) be at least 17 years of age;

(4) have obtained a high school diploma, or the equivalent of a high school diploma, or have passed a valid examination administered by a certified testing agency that measures the person's ability to benefit from training;

(5) have completed the following hours of cosmetology instruction at a licensed beauty culture school:

(A) for an esthetician specialty license, 750 hours of instruction;

(B) for a manicurist specialty license, 600 hours of instruction;

(C) for an esthetician/manicurist specialty license; either:

(i) 1,200 hours of esthetician/manicure specialty instruction or, for applications received by the department on or after August 1, 2023, 800 hours of esthetician/manicure instruction; or

(ii) 750 hours of esthetician instruction; and

(iii) 600 hours of manicure instruction; and

(6) pass a written and practical examination required under §83.21.

(c) A person who holds both an active esthetician license and an active manicurist license is eligible for an esthetician/manicurist specialty license by submitting a completed application in the manner prescribed by the department [on a department-approved form] and paying the required fee under §83.80.

(d) To be eligible for an eyelash extension specialty license, an applicant must:

(1) submit a completed application on a department-approved form;

(2) pay the fee required under §83.80;

(3) be at least 17 years of age;

(4) have obtained a high school diploma, or the equivalent of a high school diploma, or have passed a valid examination administered by a certified testing agency that measures the person's ability to benefit from training; and

(A) have satisfactorily completed 320 hours of instruction in a department-approved eyelash extension application training program; and

(B) pass a written and practical examination required under §83.21.

(e) To be eligible for a hair weaving specialty certificate, [~~or wig specialty certificate~~] an applicant must:

(1) submit a completed application on a department-approved form;

(2) pay the fee required under §83.80;

(3) be at least 17 years of age;

(4) have completed the following hours of cosmetology instruction at a beauty culture school:

[~~(A)~~] for a hair weaving specialty certificate, 300 hours of instruction completed in not less than eight weeks from date of enrollment;

[~~(B)~~] [~~for a wig specialty certificate, 300 hours of instruction completed in not less than eight weeks from date of enrollment;~~] and

(5) pass a written and practical examination required under §83.21.

[~~(f) To be eligible for an instructor or specialty instructor license an applicant must:~~]

[~~(1) submit a completed application on a department-approved form;~~]

[~~(2) pay the fee required under §83.80;~~]

[~~(3) be at least 18 years of age;~~]

[~~(4) have a high school diploma or a high school equivalency certificate;~~]

[~~(5) either hold an active operator license under this chapter for an instructor license or hold an active esthetician, manicure, esthetician/manicure or eyelash extension license for an instructor specialty license; and~~]

[~~(A) have completed a course consisting of 750 hours of instruction in methods of teaching in a licensed private beauty culture school or a vocational training program of a publicly financed postsecondary institution; or~~]

[~~(B) either have at least one year of verifiable work experience as a licensed operator for an instructor license or have at least one year of verifiable licensed experience in the specialty in which the applicant is seeking licensure for a specialty instructor license; and~~]

~~f(i)~~ ~~have completed 500 hours of instruction in cosmetology in a commission-approved training program; or~~]

~~f(ii)~~ ~~have completed 15 semester hours in education courses through an accredited college or university within the 10 years before the date of application; or~~]

~~f(iii)~~ ~~have obtained a degree in education from an accredited college or university; and~~]

[~~(6) pass a written and practical examination required under §83.21.~~]

(f) [~~(g)~~] To be eligible for a student permit, an applicant must:

(1) submit a completed application in the manner prescribed by the department [~~on a department-approved form~~]; and

(2) pay the fee required under §83.80.

(g) This section and §82.20 provide the minimum requirements for practitioner license applications received by the department before September 1, 2023. For practitioner license applications received on or after September 1, 2023, §83.200 provides the minimum requirements.

[~~(h) A license application is valid for one year from the date it is filed with the department.~~]

[~~(i) To operate a remote service business an individual must be licensed to practice cosmetology and must:~~]

[~~(1) in a manner prescribed by the department, notify the department of the intent to operate a remote service business;~~]

[~~(2) provide a permanent mailing address; and~~]

[~~(3) verify that the remote service business complies with the requirements of the Act and this chapter.~~]

[~~(j) The 86th Texas Legislature enacted changes to Chapter 1602, Occupations Code, reducing the number of hours required for a Cosmetology Operator License from 1,500 to 1,000 hours. See House Bill 2847, 86th Legislature, Regulation Session (2019), Article 14. The purpose of this transition rule is to provide guidance on how to implement the transition from 1,500 to 1,000 hours.~~]

[~~(1) Beginning January 1, 2020, the department may allow students enrolled on or after January 1, 2020 in a 1,500-hour program to transfer hours towards a 1,000-hour program if the hours meet the required technical standards. A student enrolling in cosmetology school on or after January 1, 2020 may request to transfer completed hours of a 1,500-hour program towards an approved 1,000-hour program or to transfer to another school.~~]

[~~(2) Upon request of a student enrolled on or after January 1, 2020, the school must apply hours earned towards a 1,000-hour program if the school has an approved 1,000-hour program or allow the student to transfer to another school. This rule expires on December 1, 2020.~~]

§83.21. License Requirements--Examinations.

(a) To be eligible for a department examination, an examinee must:

(1) submit a completed license application in the manner prescribed by the department [~~on a department-approved form~~];

(2) pay the applicable license fee under §83.80; and

(3) have completed the number of hours required under this chapter and the Act.

(b) A student enrolled in a 1,000-hour program is eligible to take the written examination when the department receives proof of the student's completion of 900 [~~operator~~] hours.

(c) Applicants must pass the written examination before being eligible to take the practical examination.

(d) When appearing for an examination, the examinee must [~~shall~~] bring the instruments necessary to give a practical demonstration of the barbering or cosmetology services [~~or a practical demonstration of the services~~] distinctive to the license for which the examinee is applying [~~his or her specialty~~].

(e) All barbering and cosmetology [~~department~~] examinations consist of a written and practical part. A passing grade [~~of 70~~] on each part is needed to satisfy the examination requirement.

(f) To be admitted to an examination, the examinee must present a current, valid government-issued photo identification, which includes the applicant's full name and date of birth.

(g) Examinees are required to wear closed toe shoes for the practical examination.

(h) Models used in an examination must be at least 16 years of age. The department may require proof of parental approval for models under 18 years of age.

§83.22. License Requirements--Establishments. [Beauty Salons, Specialty Salons, Mini-Salons, Dual Shops, Mini-Dual Shops, Mobile Shops, and Booth Rentals (Independent Contractors)]

(a) To be eligible for an establishment [a beauty salon, specialty salon, dual shop, mobile shop, mini-salon, mini-dual shop, or booth rental] license, an applicant must:

(1) obtain the current law and rules book;

(2) comply with the requirements of the Act and this chapter;

(3) submit a completed and verified application in the manner prescribed by the department [on a department-approved form]; [and]

(4) pay the fee required under §83.80;[.]

(5) own or rent the establishment; and

(6) have not committed an act that constitutes a ground for denial of a license.

(b) In addition to the requirements of subsection (a), the establishment must:

(1) meet this chapter's minimum health and safety standards for an establishment; and

(2) comply with all requirements of this chapter.

[(b) In addition to the requirements of subsection (a), an applicant for a dual shop or mini-dual shop must also comply with Texas Occupations Code, Chapters 1601, 1602, and 1603 and 16 TAC Chapters 82 and 83 for obtaining a beauty salon license and a barbershop permit.]

(c) In addition to the requirements of subsection (a) and (b), a mobile establishment [shop] license applicant must:

(1) provide a permanent physical address from which the mobile establishment unit is dispatched and to which the mobile establishment unit is returned when not in use;

(2) provide a permanent mailing address where correspondence from the department may be received; and

(3) verify that the mobile establishment [shop] complies with the requirements of the Act and this chapter.

[(d) To operate a remote service business, a beauty salon, specialty salon, dual shop, mobile shop, mini salon, or mini-dual shop must:]

[(1) in a manner prescribed by the department, notify the department of the intent to operate a remote service business;]

[(2) provide a permanent mailing address; and]

[(3) verify that the remote service business complies with the requirements of the Act and this chapter.]

§83.23. License Requirements--[Beauty Culture] Schools.

(a) To be eligible for a [beauty culture] school license, an applicant must:

(1) obtain the current law and rules book;

(2) comply with the requirements of the Act and this chapter;

(3) submit a completed application in the manner prescribed by the department [on a department-approved form];

(4) pay any applicable fees required under §83.40 and §83.80;

[(4) one of the following:]

[(A) for a private beauty culture school, pay the applicable license and inspection fees required under §83.80 and any required fee under §83.40; or]

[(B) for a public beauty culture school, pay the applicable inspection fee required under §83.80; and]

(5) meet the health and safety standards of this chapter; and

(5) for a private beauty culture school, provide a current financial statement prepared by a certified public accountant. If the financial statement is more than 180 days old, an applicant must also provide a supplemental financial statement within 180 days of the application.]

(6) for a private school, provide a current financial statement prepared by a certified public accountant in the format prescribed by the department. If the financial statement is more than 180 days old, an applicant must also provide a supplemental financial statement within 180 days of the application. The applicant must demonstrate that it has the financial resources to ensure continuity of operation of the school, provide a quality educational program, and fulfill its obligations to students for at least 12 months, without relying on student tuition.

(b) A [beauty culture] school must be inspected and approved by the department prior to the operation of the school.

(c) Private [beauty culture] schools [offering instruction for persons seeking a license or certificate] must have and maintain [the following]:

(1) a building of permanent construction that must include two separate areas, one area for instruction in theory and one area for clinic work, and that must also include access to permanent restrooms and adequate drinking water [fountain facilities];

(2) adequate space, equipment, and instructional materials to provide quality classroom training to the number of students enrolled;

(3) proof of ownership of building or proof of a lease for the first 12 months of operation; and

(4) a copy of the certificate of approval for the curriculum standards approved by the department for each course offered.

(d) Public [beauty culture] schools must have and maintain [the following]:

(1) adequate [Adequate] space to provide quality classroom training for the number of students enrolled including [an office, dispensary,] classroom and laboratory space;

(2) adequate equipment and instructional materials required by the department; and

(3) a copy of the certificate of approval for the curriculum standards approved by the department for each course offered.

(e) A school [beauty culture schools offering instruction for persons seeking a license or certificate] must comply with all health and safety standards established by this chapter.

§83.24. Inactive Status.

(a) To change a license to inactive status, an applicant must:

(1) submit a completed application in the manner prescribed by the department not later than the expiration date of the license; and

(2) pay fee required under §83.80 [~~on a department-approved form~~].

(b) A person whose license is on inactive status may not practice any act of barbering or cosmetology authorized by that license.

(c) A license on inactive status must be renewed in accordance with §83.26; however, continuing education is not required for renewal of a license on inactive status.

(d) To change from an inactive license to an active license, an applicant must:

(1) submit a completed application in the manner prescribed by the department [~~on a department-approved form~~];

(2) pay the fee required under §83.80; and

(3) complete the continuing education that is required for the renewal of an active license during the preceding license period. Continuing education hours used to satisfy the requirement for changing from an inactive license status to an active license status may not also be used [~~utilized~~] for a future renewal of an active license.

§83.25. License Requirements--Continuing Education.

(a) Terms used in this section have the meanings assigned by Chapter 59 [~~of this title~~] (relating to Continuing Education Requirements), unless the context indicates otherwise.

(b) To renew a practitioner [~~an operator~~] license, [~~or an esthetician, manicurist, esthetician/manicurist or eyelash extension specialty license, or a hair weaving, or wig specialty certificate,~~] a licensee must complete at least [~~a total of~~] 4 hours of continuing education through department-approved courses. The continuing education hours must include the following:

(1) 1 hour in sanitation [~~Sanitation~~] required under the Act and this chapter; [~~and~~]

(2) for renewals on or after September 1, 2025, 1 hour on human trafficking prevention, which at a minimum must include information on:

(A) activities commonly associated with human trafficking;

(B) recognition of potential victims of human trafficking; and

(C) methods for assisting victims of human trafficking, including how to report human trafficking; and

[~~(2) 3 hours in any topics listed in subsection (i).~~]

(3) the remaining hours in any topics listed in subsection (h).

(c) Continuing education hours required under §83.25(b)(3) and taught before September 1, 2025, [~~§83.25(b)(2)~~] must include information on human trafficking prevention. At [~~as required by Texas Occupations Code Chapter 1602, §1602.354(c) and at~~] a minimum, these courses must include information on:

(1) activities commonly associated with human trafficking;

(2) recognition of potential victims of human trafficking; and

(3) methods for assisting victims of human trafficking, including how to report human trafficking.

[~~(d) To renew an instructor license, or an esthetician instructor, manicure instructor, esthetician/manicure instructor or eyelash extension instructor specialty license, a licensee must complete a total of 4 hours of continuing education through department-approved courses. The continuing education hours must include the following:~~]

[~~(1) 1 hour in Sanitation required under the Act and this chapter; and~~]

[~~(2) 3 hours in methods of teaching in accordance with §83.120.~~]

[~~(e) Continuing education hours required under §83.25(c)(2) must include information on human trafficking as required by Texas Occupations Code Chapter 1602, §1602.354(c) and at a minimum must include information on:~~]

[~~(1) activities commonly associated with human trafficking;~~]

[~~(2) recognition of potential victims of human trafficking; and~~]

[~~(3) methods for assisting victims of human trafficking, including how to report human trafficking.~~]

(d) [~~(f)~~] For a timely or a late renewal, a licensee must complete the required continuing education hours within the two-year period immediately preceding the renewal date.

(e) A licensee may not receive continuing education hours for attending the same course more than once.

(f) A licensee will receive continuing education hours for only those courses that are registered with the department, under Chapter 59 and procedures prescribed by the department.

[~~(g) A licensee may receive continuing education hours in accordance with the following:~~]

[~~(1) A licensee may not receive continuing education hours for attending the same course more than once.~~]

[~~(2) A licensee will receive continuing education hours for only those courses that are registered with the department, under procedures prescribed by the department.~~]

(g) [~~(h)~~] A licensee must [~~shall~~] retain a copy of the certificate of completion for a course for two years after the date of completion. In conducting any inspection or investigation of the licensee, the department may examine the licensee's records to determine compliance with this subsection.

(h) [~~(i)~~] To be approved under Chapter 59 [~~of this title~~], a provider's course must be dedicated to instruction in one or more of the following topics:

(1) sanitation [~~Sanitation~~] required under the Act and this chapter;

(2) the Act and this chapter, addressing topics other than sanitation [~~Sanitation~~];

(3) the topics listed in the curriculum standards [~~listed~~] in §83.120 or §83.202;

(4) mental health awareness, which may include topics on mental health, mental illness, suicide prevention, and opportunities to provide clients referrals or other assistance;

(5) human trafficking prevention which at a minimum must include information on:

(A) activities commonly associated with human trafficking;

(B) recognition of potential victims of human trafficking; and

(C) methods for assisting victims of human trafficking, including how to report human trafficking.

(i) [~~(j)~~] A registered course may be offered until the expiration of the course registration or until the provider ceases to hold an active provider registration, whichever occurs first.

(j) [~~(k)~~] A provider must [~~shall~~] pay to the department a continuing education record fee of $5 for each licensee who completes a course for continuing education credit. A provider's failure to pay the record fee for courses completed may result in disciplinary action against the provider, up to and including revocation of the provider's registration under Chapter 59 [~~of this title~~].

(k) Notwithstanding subsection (b), a licensee who has held a practitioner license for at least 15 years may satisfy the continuing education requirement for renewal by completing department-approved courses as follows:

(1) for renewals before September 1, 2025, one hour of sanitation; or

(2) for renewals on or after September 1, 2025:

(A) one hour of sanitation; and

(B) one hour of human trafficking prevention.

(l) Barber licensees exempt from continuing education requirements until September 1, 2025. Beginning on September 1, 2025, the requirements of this section will apply to a licensee who, on August 31, 2023, held a license issued under Texas Occupations Code Chapter 1601 and Chapter 82, when that licensee files an application with the department to renew that license.

[~~(l) Notwithstanding subsections (b) and (c) a licensee may satisfy the continuing education requirement for renewal by completing one hour of Sanitation in department-approved courses, if the licensee:~~]

[~~(1) is at least 65 years of age; and~~]

[~~(2) has held a cosmetology license for at least 15 years.~~]

§83.26. Licensing Requirements--Renewals.

(a) To renew a license, an applicant must:

(1) comply with applicable requirements of the Act and this chapter;

(2) submit a completed application in the manner prescribed by the department [~~on a department-approved form~~]; and

(3) pay the applicable fee required under §83.80.

(b) In addition to the requirements of subsection (a), an applicant must complete the continuing education requirements under §83.25 to renew a practitioner license [~~or certificate listed in §83.80(b)(1) - (5)~~].

(c) To renew and maintain continuous licensure, the renewal requirements under this section must be completed prior to the expiration of the license. A late renewal means the licensee will have an unlicensed period from the expiration date of the expired license to the issuance date of the renewed license. During the unlicensed period, a person may not perform any act of barbering or cosmetology that requires a license under this chapter.

(d) Non-receipt of a license renewal notice from the department does not exempt a person from any requirements of this chapter.

§83.28. Substantial Equivalence [~~or Endorsement~~] and Provisional Licensure.

(a) To be granted a license through substantial equivalence [~~or endorsement~~], an applicant must:

(1) submit a completed application in the manner prescribed by the department [~~on a department-approved form~~];

(2) furnish a certified transcript of hours from the state board, territory, or foreign country from which the applicant is applying;

(3) provide one of the following:

(A) if an applicant is from another state of the United States, provide documentation that licensure in another state was obtained by standards substantially equivalent to those of Texas; or

(B) if an applicant is from a territory or foreign country, provide documents verified by the department or a certified credentialing agency confirming that licensure in the territory or foreign country was obtained by standards substantially equivalent to those of Texas;

(4) furnish an active and valid license or certificate to indicate that the applicant is licensed in good standing in another jurisdiction or foreign country; [~~and~~]

(5) pay the substantial equivalence fee and applicable license application fee required under §83.80; and[~~.~~]

(6) for applications on or after September 1, 2023, be at least 17 years of age.

(b) A person who cannot provide documentation of standards equivalent to those in Texas must pass the applicable written and practical examination for the license.

(c) A person issued a license through substantial equivalence [~~or endorsement~~] may perform those acts of barbering and cosmetology authorized by the license.

(d) The department may waive any license requirement[~~, except for an operator license,~~] for an applicant who holds a license from another state or country that has license requirements substantially equivalent to those of Texas.

(e) The department may issue a provisional license to applicants currently licensed in another jurisdiction who file an application for a Texas [~~cosmetology~~] license by substantial equivalence.

(f) To be eligible for a provisional license, an applicant must:

(1) file a completed application, in the manner prescribed by the department, for a Texas barbering or cosmetology license by substantial equivalence;

(2) provide information sufficient for the department to verify the applicant's licensure in good standing for at least two years in the license type for which the person seeks the [~~certificate or~~] license; and

(3) have been licensed in a jurisdiction or foreign country in which the requirements for obtaining the same [~~certificate or~~] license are substantially equivalent to the requirements under the Act, including passage of a national examination or other examination recognized by the department [~~commission~~] relating to the practice of the profession.

(g) A person issued a provisional license may perform those acts of barbering or cosmetology authorized by the provisional [~~certificate or~~] license pending the department's approval or denial of an applicant's license by substantial equivalence.

(h) A provisional [~~certificate or~~] license is valid until the date the department approves or denies the application for licensure by substantial equivalence. The department must approve or deny a provisional [~~certificate or~~] license holder's application for a [~~certificate or~~] license by substantial equivalence not later than the 180th day after the date the provisional [~~certificate or~~] license is issued. The department may extend the 180-day period if the results of an examination have not been received by the department before the end of that period.

(i) The department will [~~shall~~] issue a [~~certificate or~~] license by substantial equivalence to the provisional [~~certificate or~~] license holder if the person is eligible to hold a [~~certificate or~~] license under the Act.

(j) An applicant for licensure by substantial equivalence is eligible for a provisional [~~certificate or~~] license only once. A person who is denied licensure by substantial equivalence and subsequently reapplies for licensure by substantial equivalence is not eligible to obtain additional provisional [~~certificates or~~] licenses to practice barbering or cosmetology in Texas.

(k) If an applicant for a class A barber or operator license has not completed the hours required under this chapter or Chapter 82, documented work experience may be substituted at the rate of 25 hours per month worked, up to a maximum of 300 hours, or the applicant must complete the balance of hours required in an approved Texas school.

§83.29. Establishment or School Relocation, Change of Ownership, Owner Death or Incompetency.

(a) Under the Act, a license is not transferable.

(b) If an establishment relocates, the licensee must apply for a new establishment license and verify that the new establishment meets the requirements of the Act and this chapter. [~~Additionally, a relocated beauty culture school must be inspected prior to operation under the Act.~~] The requirements of this subsection do not apply to mobile establishments [~~shops~~].

(c) If a school relocates, the licensee must submit a change of location application in the manner prescribed by the department and pay the applicable fee required under §83.80 of this chapter. Additionally, a relocated school must be inspected and meet the applicable requirements of the Act and this chapter prior to operation.

(d) [~~(c)~~] If an establishment or school changes ownership, the new owner must apply for a new [~~establishment~~] license within 30 days after the change of ownership. Additionally, a [~~beauty culture~~] school must be inspected but may continue to operate pending the department's inspection. A change of ownership includes the following:

(1) For a sole proprietorship, the licensee no longer owns the establishment or school.

(2) For a partnership or limited partnership, the partnership is dissolved.

(3) For a corporation or limited liability company, if sold to another person or entity. A change of ownership does not include corporate officer or stockholder restructuring.

(4) Legal incompetence or death of the owner.

§83.31. Licenses--License Terms.

(a) The following licenses have a term of two (2) years:

(1) practitioner licenses; and

(2) establishment licenses.

(b) School licenses have a term of one (1) year.

(c) A student permit issued under this chapter does not expire.

§83.40. Barbering and Cosmetology [~~Private Beauty Culture~~] School Tuition Protection Account.

(a) Pursuant to Subchapter H-1 [~~§1602.463~~] of the Act, the Barbering and Cosmetology [~~Private Beauty Culture~~] School Tuition Protection Account is created to:

(1) refund tuition and fees to a student if a private [~~beauty culture~~] school closes and the school fails to pay the refund as required by the Act; and

(2) pay the tuition costs and expenses incurred by a private [~~beauty culture~~] school in providing training directly related to educating a student from a closed school.

(b) In each year in which the balance of the Barbering and Cosmetology [~~Private Beauty Culture~~] School Tuition Protection Account is less than $225,000 [~~$200,000~~] the department will determine a fee that must [~~shall~~] be paid by all private [~~beauty culture~~] schools to the account.

(c) The necessity for assessing the fee will be determined by the department when it conducts its annual account balance review prior to December 31st. The fee that is assessed by the department will [~~shall~~] be in effect for a period of 12 months.

(d) The fee must [~~shall~~] be paid by each private [~~beauty culture~~] school, upon annual renewal of the license during the 12-month period and must [~~shall~~] be paid in addition to the renewal fee. The renewal notice sent by the department will reflect the fee due to the account.

(e) In addition to any other fees, all new schools applying for a private [~~beauty culture~~] school license must [~~shall~~] pay the prescribed fee to the account as determined under subsection (b) before a license will be issued.

(f) In the event a student from a closed school cannot be placed or does not accept a place in another school, a refund, calculated under the closed school's refund policy, may be paid from the Barbering and Cosmetology [~~Private Beauty Culture~~] School Tuition Protection Account and the total payment of a claim may not exceed $35,000 [~~$10,000~~]. The total amount of claims paid against a single closed school may not exceed $100,000.

(g) The executive director may authorize payment to a student from the Barbering and Cosmetology [~~Private Beauty Culture~~] School Tuition Protection Account if:

(1) the student makes a claim for payment on a form approved by the executive director;

(2) a closed private [~~beauty culture~~] school has failed to pay a refund to the student within 30 days after the date the student became eligible for the refund, and the student has not been placed or accepted a place in another school with appropriate credit given to the student for tuition and fees paid to the closed school;

(3) the executive director determines after investigation that the student is owed the refund; and

(4) the student assigns to the department all rights of the student against the closed school to the extent of the amount paid to the student from the account.

(h) The executive director may authorize payment to a private [~~beauty culture~~] school from the Barbering and Cosmetology [~~Private Beauty Culture~~] School Tuition Protection Account if:

(1) the school makes a claim for payment on a form approved by the executive director;

(2) the school has incurred expenses in providing training directly related to educating a student from a closed private [~~beauty culture~~] school, including the applicable tuition for the period for which the student paid tuition;

(3) the executive director determines after investigation that the school is entitled to payment from the account; and

(4) the school assigns to the department all rights of the school against the closed school to the extent of the amount paid from the account.

(i) The department will [~~shall~~] pay claims on a pro rata basis from appropriated money available in the account if:

(1) the account contains insufficient assets to pay all claims;

(2) insufficient money has been appropriated to the department from the account to pay all claims; or

(3) the total amount of claims against a single closed school exceeds the amount specified in Subsection (f).

(j) The department will [~~shall~~] notify a closed private [~~beauty culture~~] school of any claim made against the closed school under this section. Before the executive director may authorize any payment from the account, the school must [~~shall~~] have 20 days from the date of notice of the claim to dispute the claim and present evidence to the executive director in opposition to the claim.

(k) If payment is made from the Barbering and Cosmetology [~~Private Beauty Culture~~] School Tuition Protection Account on a claim against a closed private [~~beauty culture~~] school:

(1) the school must [~~shall~~] reimburse the account immediately or agree in writing to reimburse the account, on a schedule to be determined by the executive director;

(2) the school must [~~shall~~] immediately pay the student any additional amount due to the student under the Act or agree in writing to pay the student on a schedule to be determined by the executive director;

(3) payments made by a school to the account under this subsection include interest accruing at the rate of eight percent a year beginning on the date the executive director pays the claim;

(4) the department must [~~shall~~] be subrogated to all rights of the claimant against the school to the extent of the amount paid to the claimant; and

(5) the department may assess administrative penalties or sanctions against the school and may deny an application for a license, certificate, or permit or an application for renewal of a license, certificate, or permit filed by the holder of the private [~~beauty culture~~] school license.

§83.50. Inspections--General.

(a) Schools and establishments must be inspected in accordance with Texas Occupations Code, Chapter 51, and the inspection rules under 16 Texas Administrative Code, Chapter 60, Subchapter H.

(b) An establishment owner, manager, or their representative must, upon request, make available to the department representative the list required by §83.71(c) of all independent contractors and all mini-establishment licensees who work in the establishment.

(c) The department will make information available to establishment and school owners and managers on best practices for risk-reduction techniques.

(d) The establishment or school owner, manager, employee, contractor, or their representative must cooperate with the inspector or investigator in the performance of the inspection or investigation.

§83.51. Initial Inspections--Inspection of [~~Beauty Culture~~] Schools Before Operation.

(a) Any new or relocated [~~beauty culture~~] school must be inspected and approved by the department before it may operate. Additionally, a [~~beauty culture~~] school that has changed ownership must be inspected and approved by the department but may continue to operate prior to inspection.

(b) The [~~beauty culture~~] school owner must [~~shall~~] request an initial inspection from the department and pay the fee required by §83.80.

(c) Upon receipt of the owner's request and the fee, the department will [~~shall~~] schedule the initial inspection date and notify the owner.

(d) Schools must be inspected in accordance with Texas Occupations Code, Chapter 51, and the inspection rules under 16 Texas Administrative Code, Chapter 60, Subchapter H.

[~~(d) Upon completion of the initial inspection, the owner shall be advised in writing of the results. The inspection report will indicate whether the beauty culture school meets or does not meet the minimum requirements of the Act and this chapter.~~]

[~~(e) For beauty culture schools that do not meet the minimum requirements, the report will reflect those minimum requirements that remain to be addressed by the owner.~~]

(e) [~~(f)~~] A [~~beauty culture~~] school that does not meet the minimum requirements on initial inspection may be reinspected. The [~~beauty culture~~] school owner must submit the request for reinspection [~~along with the fee required by §83.80,~~] before the department will perform the reinspection.

[~~(e) For inspections that are not approved, the inspection report will identify violations that must be corrected by the owner. The report will also indicate the corrective modifications required to address the violations, in accordance with §83.54. Additionally, the department may assess administrative penalties and/or administrative sanctions for violations, in accordance with §83.90.~~]

[~~(f) Based on the results of the periodic inspection, a cosmetology establishment found out of compliance may be re-inspected.~~]

§83.65. Barbering and Cosmetology Advisory Board.

(a) The purpose of the Barbering and Cosmetology Advisory Board is to advise the Commission and department on:

(1) education and curricula for applicants;

(2) the content of examinations;

(3) proposed rules and standards on technical issues related to barbering and cosmetology; and

(4) other issues affecting barbering and cosmetology.

(b) The board is composed of nine persons as specified in the Act. Board members will serve staggered six-year terms.

§83.70. Responsibilities of Individual Practitioners [~~Individuals~~].

(a) For purposes of this section, "licensed facility" means the premises of an establishment or school [~~a place of business that holds a~~

~~license, certificate, or permit under Texas Occupations Code, Chapters 1601, 1602 and 1603~~].

(b) A practitioner [~~licensee~~] is restricted to working in a licensed facility but may perform a service within the scope of the license, at a location other than a licensed facility for a customer who:

(1) is unable to receive the services at a licensed facility because of illness or physical or mental incapacitation; or

(2) will receive the services in preparation for and at the location of a special event; and

(3) makes the appointment for services through a licensed facility.

(c) A practitioner [~~licensee~~] performing digitally prearranged remote services may perform these services at a location other than a licensed facility if the appointment is made through a remote service business's digital network.

~~[(d) A licensee who leases space as an independent contractor on the premises of a cosmetology establishment must hold a booth rental permit.]~~

(d) [~~(e)~~] Specialty practitioners [~~certificate holders~~] may only perform the practice authorized by the specialty license [~~certificate~~].

(e) [~~(f)~~] All current licenses must either [~~may~~] be posted near [~~at~~] the licensee's work station in the public view or be made available [~~in a notebook~~] at the establishment [~~salon~~] reception desk.

(f) [~~(g)~~] A current photograph of the licensee at least [~~approximately~~] 1 1/2 inches by 1 1/2 inches must [~~shall~~] be attached to the front of the license[~~, certificate~~] or permit, or digitally displayed along with an image of the license or permit. The photograph may not obscure any information on the license or permit.

(g) [~~(h)~~] Practitioners must [~~Licensees shall~~] notify the department in writing of any name change within thirty (30) days of the change.

(h) [~~(i)~~] Practitioners [~~Licensees~~] must notify the department within thirty (30) days following any change of address. The department may send all notices on other information required by applicable laws and rules to any licensee's last known mailing address on file with the department.

(i) [~~(j)~~] Practitioners must [~~Licensees shall~~] wear clean top and bottom outer garments and footwear while performing services authorized under the Act. Outer garments include tee shirts, blouses, sweaters, dresses, smocks, pants, jeans, shorts, and other similar clothing and do not include lingerie [~~or see-through fabric~~].

(j) [~~(k)~~] Practitioners [~~Licensees~~] are responsible for compliance with the health and safety standards of this chapter.

§83.71. Responsibilities of Establishments [~~Beauty Salons, Mini-Salons, Specialty Salons, Dual Shops, Mini-Dual Shops and Booth Rentals~~].

(a) Each establishment must have [~~a copy of~~] the current law and rules book.

(b) Each establishment is responsible for compliance with the health and safety standards of this chapter.

(c) An establishment [~~Beauty salons, specialty salons and dual shops~~] may lease space to an independent contractor who is a practitioner [~~holds a booth rental (independent contractor) license~~]. The lessor to an independent contractor practitioner must maintain a list of all renters that includes the name of renter and the [~~cosmetology~~] license number of the renter. The lessor must supply the department representative with a list of renters upon request.

(d) An establishment [~~Beauty salons, specialty salons and dual shops~~] may lease space to mini-establishment license holders [~~mini-salon licensees or mini-dual shop permittees~~]. The lessor must maintain a list of all mini-establishment [~~mini-salon or mini-dual shop~~] license numbers and expiration dates and must provide the list to a department representative upon request.

(e) A mini-establishment license holder [~~Mini-salon licensees and mini-dual shop permittees~~] must maintain the name, license number, and license expiration date of each person working in the mini-establishment [~~mini-salon or mini-dual shop~~].

(f) Establishments [~~Cosmetology establishments~~] that lease space to mini-establishments [~~mini-salon licensees or mini-dual shop permittees~~] must maintain all common areas.

(g) Each establishment must [~~salon shall~~] comply with the following requirements:

(1) a sink with hot and cold running water in an area where services are performed;

(2) an identifiable sign with the establishment's [~~salon's~~] name;

(3) a suitable receptacle for used towels/linen;

(4) a wet disinfectant soaking container, large enough to fully immerse tools and implements;

(5) a clean, dry, debris-free storage area;

(6) a minimum of one covered trash container; and

(7) if providing manicure or pedicure nail services, an autoclave, dry heat sterilizer or ultraviolet sanitizer.

(h) In addition to the requirements of subsection (g):

(1) full-service establishments and mini-establishments must [~~beauty salons and mini-salons shall~~] provide the following equipment for each practitioner [~~licensee~~] present and providing services:

(A) one working station;

(B) one styling or barber chair; and

(C) a sufficient number [~~amount~~] of shampoo bowls. The establishment must have at least one shampoo bowl if the establishment provides shampooing or any service that results in a permanent change to the color or structure of the hair. A mini-establishment providing these services will be in compliance with this rule if the mini-establishment has access to at least one shampoo bowl.

(2) establishments providing manicure services must [~~salons shall~~] provide the following equipment for each practitioner [~~licensee~~] present and providing services:

(A) one manicure station [~~table~~] with sufficient lighting [~~light~~];

(B) one manicure chair or stool; and

(C) one [~~professional~~] client chair for each manicure station.

(3) establishments providing esthetician services must [~~salons shall~~] provide the following equipment for each practitioner [~~licensee~~] present and providing services:

(A) one facial bed or chair; and

(B) one mirror.

(4) establishments providing combination esthetician/manicure services must [~~salons shall~~] provide the following equipment:

(A) the requirements for establishments providing manicure services [~~salon~~]; and

(B) the requirements for establishments providing esthetician services [~~salon~~].

(5) establishments providing eyelash extension services must [~~salons shall~~] provide the following equipment for each practitioner [~~licensee~~] present and providing services:

(A) one facial bed, chair, or massage table, all of which must allow [~~that allows~~] the consumer to lie completely flat;

(B) one lamp; [~~and~~]

(C) one stool or chair; and[~~.~~]

(D) one mirror.

[~~(6) wig salons shall provide the following equipment for each licensee present and providing services:~~]

[~~(A) one mannequin table, station, or styling bar to accommodate a minimum of 10 hairpieces;~~]

[~~(B) one wig dryer; and~~]

[~~(C) two canvas wig blocks.~~]

(6) [~~(7)~~] establishments providing hair weaving services must [~~salons shall~~] provide the following equipment for each practitioner [~~licensee~~] present and providing services:

(A) one work station;

(B) one styling chair; [~~and~~]

(C) one chair dryer or handheld dryer; and

(D) [~~(C)~~] a sufficient number, no fewer than one in the entire establishment, [~~amount~~] of shampoo bowls for practitioners [~~licensees~~] providing hair weaving services.

[~~(8) Dual shops shall:~~]

[~~(A) comply with all requirements of the Act and this chapter applicable to beauty salons;~~]

[~~(B) comply with all requirements of Texas Occupations Code, Chapter 1601, and Chapter 82 of this title applicable to barbershops;~~]

[~~(C) if the shop does not currently have employed or have a contract with at least one licensed barber or one licensed cosmetologist, the owner must immediately display a prominent sign at the entrance and exit of the shop indicating that no barber or no cosmetologist is available; and~~]

[~~(D) if the shop has neither employed nor contracted with at least one licensed barber or cosmetologist for a period of 45 days or more the owner shall:~~]

~~*(i)* not place any new advertisement or display any sign or symbol indicating that the shop offers barbering or cosmetology services; and~~]

~~*(ii)* remove or obscure any existing sign or symbol indicating that the shop offers barbering or cosmetology services.~~]

[~~(9) Mini-dual shops shall:~~]

[~~(A) comply with all requirements of the Act and this chapter applicable to beauty salons; and~~]

[~~(B) comply with all requirements of Texas Occupations Code, Chapter 1601, and 16 TAC Chapter 82 applicable to barbershops.~~]

(i) All practitioners [~~booth rental licensees~~] acting as independent contractors must have the following items:

(1) a wet disinfectant soaking container, large enough to fully immerse tools and implements;

(2) a clean, dry, debris-free storage area;

(3) a suitable receptacle for used towels/linen; and

(4) a current law and rules book.

(j) In addition to the requirements in subsection (i), practitioners [~~booth rental licensees~~] acting as independent contractors must have the following items.

(1) If practicing in a full-service establishment [~~beauty salon~~], one work station and one styling or barber chair.

(2) If practicing in an establishment providing esthetician services [~~salon~~], one facial bed or chair and one mirror, wall-hung or handheld [~~wall hung or hand held~~].

(3) If practicing in an establishment providing [~~a~~] manicure services [~~salon~~], one manicure station [~~table~~] with sufficient lighting [~~a light~~], one manicure chair or stool, and one client chair, professional in appearance.

(4) If practicing in an establishment providing eyelash extension services [~~salon~~], one facial bed, chair, or massage table that allows the consumer to lie completely flat, one stool or chair, [~~and~~] one lamp, and one mirror.

(k) Practitioners [~~Booth rental licensees~~] acting as independent contractors must comply with all state and federal laws relating to independent contractors.

(l) Establishments must [~~Cosmetology establishments shall~~] display in the establishment, in a conspicuous place clearly visible to the public, a notice that a copy of the establishment's most recent inspection report issued by the department is available upon request.

(m) All licensed establishments [~~facilities~~] must display in a conspicuous place clearly visible to the public a sign, acceptable to the department, regarding human trafficking information as required by Texas Occupations Code §1603.356 and this chapter[~~, Chapter 1602, §1602.408~~].

(n) An establishment must ensure that all persons performing or offering to perform barbering or cosmetology services at the establishment are properly licensed at all times. An establishment may not allow a person to perform any barbering or cosmetology service for which the person does not hold the required license.

(o) An establishment may not perform or offer to perform any barbering or cosmetology service outside the scope of the establishment's license.

(p) A person may not operate an establishment or school on the same premises, at the same time, as another establishment or school, unless the facilities are separated by walls of permanent construction without an opening between the facilities. This does not apply to mini-establishments or mobile establishments that are operated on the same premises as other establishments.

(q) Each establishment must display a copy of §§83.100-83.115. An establishment may meet this requirement by placing the law and rules book so that it is accessible to all practitioners who work in the establishment.

§83.72. Responsibilities of [~~Beauty Culture~~] Schools.

(a) Each school [~~establishment~~] must have [~~a copy of~~] the current law and rules book.

(b) Each school [~~establishment~~] is responsible for compliance with the health and safety standards of this chapter.

(c) Each school must notify [~~Notify~~] the department of any alterations to [~~of~~] a school's [~~cosmetology establishment's~~] floor plan.

(d) The certificate of curriculum approval must [~~shall~~] be posted in a conspicuous place in the school. A current syllabus and lesson plan for each course must [~~shall~~] be maintained by the school and be available for inspection.

~~[(e) Unless the context clearly indicates otherwise, when used in this section the term "student-instructor" shall mean a student permit holder who is enrolled in an instructor course of a beauty culture school.]~~

(e) [~~(f)~~] Schools must have at least one [~~licensed~~] instructor on duty for each 25 students in attendance, including evening classes. [~~A school may not enroll more than three student-instructors for each licensed instructor teaching in the school. The student-instructor shall at all times work under the direct supervision of the licensed instructor and may not service clients, but will concentrate on teaching skills.~~] An [~~A licensed~~] instructor must be physically present during all practical curriculum standard activities, and physically present or participating through distance education for theory curriculum standard activities. No credit for instructional hours can be granted to a [~~cosmetology~~] student unless such hours are accrued under the supervision of an [~~a licensed~~] instructor.

(f) [~~(g)~~] Schools offering distance education must:

(1) obtain department approval before offering a course;

(2) provide students with the educational materials necessary to fulfill course requirements; and

(3) comply with the curriculum standards in §83.120(d) by limiting distance education to instruction in theory.

(g) [~~(h)~~] Schools must maintain one album to display each student permit, including affixed picture, of each enrolled student. The permits must [~~shall~~] be displayed in alphabetical order by last name, then alphabetical order by first name, and, if more than one student has the same name, by student permit number.

(h) [~~(i)~~] Schools may use a time clock to track student hours and maintain a daily record of attendance or schools may use credit hours.

(i) [~~(j)~~] Schools using time clocks must ensure compliance with the following requirements and [~~shall~~] post a sign at the time clock that states the following department requirements:

(1) Each student must personally clock in/out [~~for himself/herself~~].

(2) No credit may [~~shall~~] be given for any times written in, except in a documented case of time clock failure or other situations approved by the department.

(3) If a student is in or out of the facility for lunch, the student [~~he/she~~] must clock out.

(4) Students leaving the facility for any reason, including smoking breaks, must clock out, except when an instructional area on a campus is located outside the approved facility, that area is approved by the department and students are under the supervision of an [~~a licensed~~] instructor.

(j) [~~(k)~~] Students are prohibited from preparing hour reports or supporting documents. Only [~~Student-instructors may prepare hour reports and supporting documents however only~~] school owners and school designees, including [~~licensed~~] instructors, may electronically submit information to the department in accordance with this chapter. No student permit holder [~~, including student-instructors,~~] may electronically submit information to the department under this chapter.

(k) [~~(l)~~] A school must properly account for the hours granted to each student. A school may [~~shall~~] not engage in any act directly or indirectly that grants or approves student credit that is not accrued in accordance with this chapter. A school must maintain and have available for a department and/or student inspection the following documents for a period of the student's enrollment through 48 months after the student completes the curriculum standards, withdraws, or is terminated:

(1) daily record of attendance;

(2) the following documents if a time clock is used:

(A) time clock record(s);

(B) time clock failure and repair record(s); and

(C) field trip records in accordance with §83.120(e)(5); and

(3) all other relevant documents that account for a student's credit under this chapter.

(l) [~~(m)~~] Schools using time clocks must [~~shall~~], at least one time per month submit to the department an electronic record of each student's accrued clock hours in a manner and format prescribed by the department. A school's initial submission of clock hours must [~~shall~~] include all hours accrued at the school. Delayed data submission(s) are permitted only upon department approval, and the department will [~~shall~~] prescribe the period of time for which a school may delay the electronic submission of data, to be determined on a case-by-case [~~case by case~~] basis. Upon department approval, a school may submit data required under this subsection in an alternate manner and format as determined by the department, if the school demonstrates that the requirements of this subsection would cause a substantial hardship to the school.

(m) [~~(n)~~] Schools using credit hours must [~~shall~~], at the end of the course or module or if the student drops or withdraws, submit to the department an electronic record of each student's accrued credit hours in a manner and format prescribed by the department.

(n) [~~(o)~~] Schools changing from clock hours to credit hours or from credit hours to clock hours must apply with the department for approval, on a department approved form, prior to making any changes.

(o) [~~(p)~~] Successful completion of 1 credit hour is equal to 37.5 clock hours. This equivalency will be used for conversion between clock hours to credit hours or credit hours to clock hours and the department must periodically assess this equivalency conversion to ensure it is an acceptable industry standard.

(p) [~~(q)~~] Except for a documented leave of absence, schools must [~~shall~~] electronically submit a student's withdrawal or termination to the department within 10 calendar days after the withdrawal or termination. Except for a documented leave of absence, a school must [~~shall~~] terminate a student who does not attend class for 30 consecutive days.

[(r) Public schools shall electronically submit a student's accrual of 500 hours in math, lab science, and English.]

(q) [(s)] All areas of a school or campus are acceptable as instructional areas for a public [cosmetology] school, provided that the instructor is teaching barbering or cosmetology curricula required under §83.120.

(r) [(t)] A private [cosmetology] school or public post-secondary school may provide barbering and cosmetology instruction to public high school students by contracting with the school district and complying with Texas Education Agency law and rules. A public high school student receiving instruction under such contract is considered to be a public high school student enrolled in a public school barbering and cosmetology program for purposes of the Act and department rules.

(s) [(u)] Schools may establish school rules of operation and conduct, including rules relating to absences and clothing, that do not conflict with this chapter.

(t) [(v)] Schools must ensure that guest presenters possess the necessary knowledge and teaching ability to present a curriculum standard topic and that an [a licensed] instructor is present during the guest presenter's classroom teaching.

(u) [(w)] Schools [Beauty culture schools] must have a classroom separated from the laboratory area by walls extending to the ceiling and equipped with the following equipment [to properly instruct students enrolled at the school]:

(1) if using a time clock to track student hours, one day/date formatted computer time clock;

(2) desks and chairs or table space for each student in attendance;

(3) multi-media equipment;

(4) [a dispensary containing] a sink with hot and cold running water and secure space for storage and dispensing of supplies and equipment;

(5) a suitable receptacle for used towels/linens;

(6) covered trash cans in lab area; [and]

(7) wet disinfectant soaking container, large enough to fully immerse tools and implements; [.]

(8) for each student, equipment that is:

(A) sufficient to enable the student to perform the services associated with the curriculum standards for which the student is enrolled;

(B) in good working condition; and

(C) of adequate design to permit effective instruction;

(9) [(8)] if [If] offering the class A barber or operator curriculum standards, the following equipment [must be] available in adequate number for student use:

(A) shampoo bowl and shampoo chair;

(B) hair drying equipment or professional hand-held hair dryers;

(C) cold wave rods;

(D) thermal iron (electric or non-electric);

(E) styling station covered with a non-porous material that can be cleaned and disinfected, with mirror and styling or barber chair (swivel or hydraulic);

(F) mannequin with sufficient hair [, with table or attached to styling station];

(G) professional hand clippers;

(H) manicure station [table] and stool;

(I) facial [chair or] bed or a chair that reclines;

[(J) lighted magnifying glass;]

(J) [(K)] dry sanitizer; and

(K) [(L)] wet disinfectant soaking containers, large enough to fully immerse tools and implements;[.]

(10) [(9)] if [If] offering the esthetician curriculum standards, the following equipment [must be] available in adequate number for student use:

(A) facial [chair or] bed or a chair that reclines;

(B) lighted magnifying glass;

(C) woods lamp;

(D) dry sanitizer;

(E) steamer machine;

(F) brush machine for cleaning;

(G) vacuum machine;

(H) high frequency machine for disinfection, product penetration, stimulation;

(I) galvanic machine for eliminating encrustations, product penetration;

[(J) paraffin bath and paraffin wax;]

(J) [(K)] mannequin head; and

(K) [(L)] wet disinfectant soaking containers, large enough to fully immerse tools and implements.

(11) [(10)] if [If] offering the manicure curriculum standards, the following equipment [must be] available in adequate number for student use:

(A) an autoclave, dry-heat sterilizer or ultra-violet sanitizer;

(B) [complete] manicure station [table] with sufficient lighting [light];

(C) client chair;

(D) student stool or chair;

(E) whirlpool foot spa or foot basin;

(F) electric nail file;

(G) UV light curing system;

(H) paraffin bath and paraffin wax; and

[(I) air brush system; and]

(I) [(J)] wet disinfectant soaking containers;[.]

(12) [(11)] if [If] offering the esthetician/manicure curriculum standards, the equipment required for the esthetician curriculum standards as listed in paragraph (10) [(9)]; and the equipment required

for the manicure curriculum standards as listed in paragraph (11) [~~(10)~~]; [~~including a wax warmer and paraffin warmer for each service,~~] in adequate number for student use; and[~~.~~]

(13) [~~(12)~~] if [~~If~~] offering the eyelash extension curriculum standards,[~~:~~] the following equipment [~~must be~~] available in adequate number for student use:

(A) facial bed, facial chair, or massage table, all of which must allow [~~that allows~~] the consumer to lie completely flat;

(B) stool or chair;

(C) lamp;

(D) mannequin head;

(E) wet disinfectant soaking containers; and

(F) dry sanitizer.

(v) [~~(x)~~] Schools must [~~Cosmetology schools shall~~] display in the school, in a conspicuous place clearly visible to the public:

(1) a notice that a copy of the school's most recent inspection report issued by the department is available upon request; [~~and~~]

(2) a sign, acceptable to the department, regarding human trafficking information as required by Texas Occupations Code §1603.356 and this chapter; and[~~, Chapter 1602, §1602.408.~~]

(3) a sign that reads "SCHOOL--STUDENT PRACTITIONERS" in at least 10-inch block letters, visible from the outside of each client entrance to the licensed school facility.

(w) A school may not award credit or provide instruction for, and a student may not earn, more than 184 hours or equivalent credit hours per calendar month.

(x) Each school must display a copy of §§83.100-83.115. A school may meet this requirement by placing the law and rules book so that it is accessible to all students and all staff who work in the school.

§83.73. Responsibilities of Students.

(a) Students are responsible for compliance with the health and safety standards of this chapter.

(b) Students may [~~shall~~] not engage in any act that constitutes dishonesty or misrepresentation related [~~of or relating~~] to a student's hours accrued under this chapter.

§83.74. Responsibilities--Withdrawal, Termination, Transfer, School Closure.

(a) A student desiring to transfer from one school to another must withdraw from the first school prior to the transfer. Enrollment in two or more schools [~~of cosmetology~~] at the same time is prohibited.

(b) A student transferring to a school who desires to claim credit earned must inform the school transferred to prior to enrollment of the student's [~~his/her~~] prior attendance and must furnish to that school and the department a record of credit claimed. This record may be in the form of a transcript from the prior school or an extract from records of the department.

(c) Upon withdrawal, and provided that the agreed tuition and fees have been tendered, a student is entitled to an official transcript of credit earned at the school withdrawn from. The transcript must be ready for pickup or, if mailed, postmarked within ten calendar days of the school's receipt of notice of withdrawal. A copy of the transcript must be kept in the student's file for 48 months and the copy must be made available at the request of the department.

(d) A student who withdraws from a [~~cosmetology~~] school is entitled to a refund in accordance with Texas Occupations Code, Chapter 1603 and this chapter [~~1602~~].

(e) Withdrawal or termination must [~~shall~~] be defined by the number of hours scheduled according to the enrollment agreement or contract the student has signed with the school or other document acceptable to the department and not the clock hours the student has earned during class attendance.

(f) If a school closes or ceases operation before the class credit is earned, the student is entitled to a tuition refund in accordance with Texas Occupations Code, Chapter 1603 [~~1602~~].

(g) Any student of an out-of-state private or public [~~cosmetology~~] school may submit a request to the department to transfer the completed credit to a Texas school. A transcript must be submitted on the prescribed form and certified by the school in which the instruction was given. Portions of the curricula of the department not taught in another state must be taken in an approved Texas school prior to taking the Texas examination.

(h) A student enrolled for a class A barber, operator, or specialty course may withdraw and transfer hours acquired to another [~~the operator~~] course not to exceed the amount of hours of that subject in the applicable [~~operator~~] curriculum standards. [~~Students enrolled in the operator course may withdraw and transfer up to the maximum specialty hours within the operator curriculum standards for that course.~~]

§83.77. Remote Service Business Responsibilities.

(a) A person or entity licensed under this chapter [~~licensee~~] may not operate a remote service business without first: [~~providing notice to the department in accordance with this chapter.~~]

(1) providing, in a manner prescribed by the department, notice of the licensee's intent to operate a remote service business;

(2) providing a permanent mailing address for the remote service business; and

(3) verifying that the remote service business complies with the requirements of the Act and this chapter.

(b) Only licensed practitioners [~~individuals~~] may perform digitally prearranged remote services.

(c) A remote service business must comply with the requirements of the Act, this chapter, and all health and safety requirements, as applicable.

(d) A remote service business may not offer a barbering or cosmetology service that requires treating or removing a person's hair by:

(1) coloring;

(2) processing;

(3) bleaching;

(4) dyeing;

(5) tinting; or

(6) using a cosmetic preparation.

(e) A remote service business may offer only the following barbering or cosmetology services:

(1) haircutting, hairstyling, [~~wigs, artificial hairpieces,~~] or weaving a person's hair by thread and needle or attaching by clamps or glue;

(2) arranging, beautifying, shaving [~~with a safety razor~~], styling, or trimming a person's mustache or beard;

(3) beautifying a person's face, neck, or arms using[,] antiseptic, tonic, lotion, powder, oil, clay, or cream;

(4) removing superfluous hair on the face using tweezers;

(5) massaging, cleansing, and treating a person's hands or feet for polish change manicures and pedicures, and non-whirlpool foot basin pedicures only; and

(6) applying semi-permanent, thread-like extensions composed of single fibers to a person's eyelashes.

(f) A remote service business may not offer portable whirlpool foot spa pedicures.

(g) A licensed practitioner [~~individual~~] performing digitally prearranged remote services must practice within the scope of the practitioner's [~~individual's~~] license and may only provide the services specifically authorized by this section.

(h) A remote service business must [~~shall~~] provide through the entity's digital network prior to any digitally prearranged remote service being performed:

(1) the following information regarding the practitioner [~~licensee~~] who will perform the service:

(A) the person's first and last name;

(B) the person's license number [~~, certificate of registration, or permit number, as applicable~~]; and

(C) a photograph of the person who will be performing the remote services;

(2) the following information regarding the business:

(A) internet [~~Internet~~] website address; and

(B) telephone number; and

(3) the department's internet [~~Internet~~] website address and telephone number and notice that the client may contact the department to file a complaint against the remote service business or practitioner [~~licensed individual~~] performing the service.

(i) A remote service business must [~~shall~~] maintain records and information showing compliance with this chapter and the Act until at least the fifth anniversary of the date the record was generated.

(j) A practitioner [~~licensee~~] who provides [~~a~~] digitally prearranged remote services is responsible for the services provided.

(k) A remote service business must [~~shall~~] terminate a practitioner's [~~licensee's~~] access to the business's digital network if the remote service business or department determine there has been a violation of:

(1) this chapter; or

(2) the Act.

(l) Before a practitioner [~~licensee~~] provides a digitally prearranged remote service, the remote service business and the practitioner [~~licensee~~] must ensure that all implements and supplies have been cleaned, disinfected, and sanitized or sterilized with department-approved disinfectants and in accordance with the requirements of the Act and this chapter.

(m) A remote service business and a practitioner [~~licensee~~] performing remote services must ensure compliance with all safety and sanitation [~~sanitations~~] requirements related to the digitally prearranged remote services being provided and in accordance with the Act and this chapter.

(n) A remote service business must [~~shall~~] maintain accurate records and information showing compliance with this chapter and the Act and must make these records available to the department upon request.

§83.78. Responsibilities of Mobile Establishment [~~Shops~~].

(a) A mobile establishment must [~~shop shall~~] comply with all health and safety requirements and all other requirements of the Act and this chapter for establishments or specialty establishments [~~beauty salons or specialty salons~~], as applicable, except as modified by this section or as otherwise indicated.

(b) A mobile establishment [~~shop~~] license holder must [~~shall~~] maintain a permanent physical address as required by §83.22(c). The mobile establishment must [~~shop shall~~] notify the department in writing of any change in [~~physical or~~] mailing address within 10 calendar days of the change.

(c) Records of the following must [~~shall~~] be kept within the mobile establishment unit and made available for inspection by department personnel: appointments; itineraries, if the establishment [~~shop~~] submits itineraries to the department as provided by subsection (d); license numbers of employees and independent contractors; and vehicle identification numbers of the mobile establishment [~~shop~~]. Records of appointments and itineraries must [~~shall~~] be kept for a period of at least one year from the date the record is made.

(d) A mobile establishment must [~~shop shall~~] either:

(1) have a Global Positioning System (GPS) tracking device that enables the department to track the location of the mobile establishment [~~shop~~] over the internet [~~Internet~~] and meet the following requirements:

(A) the device must [~~shall~~] be on board and functioning at all times the mobile establishment [~~shop~~] is in operation or open for business; and

(B) the mobile establishment must [~~shop shall~~] provide the department with all information necessary to track the establishment [~~shop~~] over the internet [~~Internet~~]; or

(2) submit to the department, in a manner specified by the department, a weekly itinerary showing the dates, exact locations, and times of service to be provided. The license holder must [~~shall~~] submit the itinerary not less than 7 calendar days prior to the beginning of service described in the itinerary and must [~~shall~~] submit to the department any changes in the itinerary not less than 24 hours prior to the change. A mobile establishment must [~~shop shall~~] follow the itinerary in providing service and notify the department of any changes.

(e) Furniture must [~~shall~~] be anchored to the mobile establishment unit.

(f) All chemicals in the mobile establishment must [~~shop shall~~] be stored in cabinets secured with safety catches and must [~~shall~~] be stored separate and apart from other articles or equipment in the establishment [~~shop~~].

(g) A mobile establishment must [~~shop shall~~] display on both sides of the exterior of the mobile establishment [~~shop~~], the mobile establishment's [~~shop's~~] license number and a sign stating the name of the establishment [~~shop~~].

(h) A mobile establishment must [~~shop shall~~] have a water heater that provides fresh, hot water continuously and on demand.

(i) A mobile establishment unit must [~~shall~~] have a fresh water tank holding a sufficient amount of fresh water to perform the day's business. If a mobile establishment unit's fresh water supply is depleted, operation must cease until the supply is replenished.

(j) A mobile establishment must [~~shop shall~~] have a functioning restroom available for use on the premises where the mobile establishment is located when providing services [~~within its perimeter, including a self-contained, flush toilet with holding tank~~].

(k) No services may be performed outside the mobile establishment [~~shop~~] or while the mobile establishment [~~shop~~] is in motion.

(l) A mobile establishment [~~shop~~] may not be used as a residence or for any other purpose besides providing barbering or cosmetology services.

§83.80. Fees (before September 1, 2023).

(a) Application fees.

(1) Operator License--$50

(2) Specialty License--Esthetician, Manicurist, Esthetician/Manicurist, Eyelash Extension, Hair Weaving--$50

[~~(3) Specialty Certificate--Hair Weaving--$50~~]

(3) [~~(4)~~] Student Permit--$25

[~~(5) Instructor License--$60~~]

[~~(6) Instructor Specialty License--Esthetician, Manicurist, Esthetician/Manicure, Eyelash Extension--$60~~]

(4) [~~(7)~~] Beauty and specialty salon--$106

(5) [~~(8)~~] Mini-Salon License--$60

[~~(9) Booth Rental (Independent Contractor) License--No fee~~]

(6) [~~(10)~~] Beauty Culture School--$300

[~~(11) Dual Shop--$130~~]

[~~(12) Mini-Dual Shop Permit--$60~~]

(7) [~~(13)~~] Mobile Shop--$106

(b) Renewal fees.

(1) Operator License--$50

(2) Specialty License--Esthetician, Manicurist, Esthetician/Manicurist, Eyelash Extension, Hair Weaving--$50

[~~(3) Specialty Certificate--Hair Weaving--$50~~]

[~~(4) Instructor License--$50~~]

[~~(5) Instructor Specialty License--Esthetician, Manicurist, Esthetician/Manicure, Eyelash Extension--$50~~]

(3) [~~(6)~~] Beauty and specialty salons--$69

(4) [~~(7)~~] Mini-Salon--$60

[~~(8) Mini-Dual Shop--$60~~]

[~~(9) Booth Rental (Independent Contractor) License--No fee~~]

(5) [~~(10)~~] Beauty Culture School--$200

[~~(11) Dual Shop--$100~~]

(6) [~~(12)~~] Mobile Shop--$69

(c) Substantial equivalence or Endorsement Fee--$50

(d) Inactive License Status

(1) Renewal of license on inactive status--renewal fees as stated in §83.80(b).

(2) Change from inactive status to active status--$25.

(e) Revised or Duplicate License [~~Revised/Duplicate License/Certificate/Permit/Registration~~]--$25

(f) Law and Rules book--$14

(g) School (public and private) Inspection Fees [~~(for each occurrence)~~]--$200

(h) Verification of license [~~, permit, or certificate~~] to other states--$15

(i) Student transcript fee--$5

(j) Late renewals fees for licenses under this chapter are provided under §60.83 [~~of this title~~] (relating to Late Renewal Fees).

(k) All fees are nonrefundable, except as otherwise provided by law or commission rule.

(l) Law and rule book fee is included in the application and renewal fees for student, individual, school, and establishment licenses[~~, certificates,~~] and permits.

(m) This section and §82.80 provide the fees that are required before September 1, 2023. Section 83.201 provides the fees that are required on or after September 1, 2023.

§83.90. Administrative Sanctions and Penalties.

A person that violates Texas Occupations Code, Chapter [~~Chapters 1602 or~~] 1603, a rule, or an order of the Executive Director or Commission relating to Chapter [~~Chapters 1602 or~~] 1603, will [~~shall~~] be subject to the imposition of administrative sanctions and/or administrative penalties in accordance with Texas Occupations Code, Chapters 51 and[~~, 1602, or~~] 1603, and 16 Texas Administrative Code, Chapter 60 [~~of this title~~] (relating to the Texas Department of Licensing and Regulation).

§83.100. Health and Safety Definitions.

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

(1) Chlorine bleach solutions--A chemical used to destroy bacteria and to disinfect implements and non-porous surfaces; solution should be mixed fresh at least once per day. As used in this chapter, chlorine bleach solutions fall into three categories based on concentration and exposure time:

(A) Low level disinfection (100 - 200 ppm)--Add two teaspoons household (5.25%) bleach to one gallon water. Soak 10 minutes minimum.

(B) High level disinfection (1,000 ppm)--Add one-third (1/3) cup household (5.25%) bleach to one gallon water. Soak 20 minutes minimum.

(C) Blood and body fluid cleanup and disinfection (5,000 ppm)--Add one and three-quarters (1 3/4) cups household (5.25%) bleach to one gallon water. Also referred to as a 10% bleach solution.

(2) Clean or cleansing--Washing with liquid soap and water, detergent, antiseptics, or other adequate methods to remove all visible debris or residue. Cleansing is not disinfection.

(3) Disinfect or disinfection--The use of chemicals to destroy pathogens on implements and other [~~hard,~~] non-porous surfaces to render an item safe for handling, use, and disposal.

(4) Disinfectant--In this chapter, one of the following department-approved chemicals:

(A) an EPA-registered bactericidal, fungicidal, and virucidal disinfectant used in accordance with the manufacturer's instructions; or

(B) a chlorine bleach solution used in accordance with this chapter.

(5) EPA-registered bactericidal, fungicidal, and virucidal disinfectant--When used according to manufacturer's instructions, a chemical that is a low-level disinfectant used to destroy bacteria and to disinfect implements and non-porous surfaces.

(6) Multi-use items--Items constructed of hard materials with smooth surfaces such as metal, glass, or plastic typically for use on more than one client. The term includes but is not limited to such items as clippers, scissors, combs, nippers, tweezers, and some nails files.

(7) Single-use items--Porous items made or constructed of cloth, wood, or other absorbent materials having rough surfaces usually intended for single use including but not limited to such items as tissues, orangewood sticks, cotton balls, thread, surgical tape, extension pads, some buffer blocks, and gauze.

(8) Sterilize or sterilization--To eliminate all forms of bacteria or other microorganisms by use of an autoclave or dry heat sterilizer.

(9) Sanitize or sanitization--To reduce the number of microorganisms to a safe level by use of an ultraviolet sanitizer.

§83.101. Health and Safety Standards--Department-Approved Disinfectants.

(a) EPA-registered bactericidal, fungicidal, and virucidal disinfectants must [~~shall~~] be used as follows:

(1) Implements and surfaces must [~~shall~~] first be thoroughly cleaned of all visible debris prior to disinfection. EPA-registered bactericidal, fungicidal, and virucidal disinfectants become inactivated and ineffective when visibly contaminated with debris, hair, dirt and particulates.

(2) Some disinfectants may be sprayed on the instruments, tools, or equipment to be disinfected.

(3) Disinfectants in which implements are to be immersed must [~~shall~~] be prepared fresh daily or more often if solution becomes diluted or soiled.

(4) In all cases the disinfectant must [~~shall~~] be used in accordance with the manufacturers' instructions for disinfecting [~~recommendation~~] or other guidance in this rule.

(5) These chemicals are harsh and may affect the long-term [~~long term~~] use of scissors and other sharp objects. Therefore, the department recommends leaving items in solution in accordance with the manufacturers' recommendation for effective disinfection.

(b) Chlorine bleach solutions must [~~shall~~] be used as follows:

(1) Chlorine bleach at the appropriate concentration is an effective disinfectant for all purposes in an establishment [~~a salon~~].

(2) Chlorine bleach solutions must [~~shall~~] be mixed daily.

(3) Chlorine bleach must [~~shall~~] be kept in a closed covered container and not exposed to sunlight.

(4) Chlorine bleach may affect the long-term use of scissors and other sharp objects, so the department does not recommend leaving items in bleach solution beyond 2 minutes for effective disinfection (5 minutes if disinfecting for blood contamination).

(5) Chlorine bleach vapors might react with vapors from other chemicals. Therefore, chlorine bleach solution must [~~shall~~] not be placed or stored near other chemicals used in establishments [~~salons~~] (i.e., acrylic monomers, alcohol, or other disinfecting products) or near flame.

(6) Used or soiled chlorine bleach solution must [~~shall~~] be properly disposed of each day.

§83.102. Health and Safety Standards--General Requirements.

(a) All practitioners must [~~licensees shall~~] clean their hands with soap and water or use a hand sanitizer prior to performing any services and as necessary during the service to ensure a client health and safety. All [~~cosmetology~~] establishments, schools, and practitioners must [~~licensees shall~~] utilize clean and disinfected equipment, tools, implements, and supplies in accordance with this chapter, and must [~~shall~~] employ good hygiene habits while providing barbering or cosmetology services.

(b) A practitioner [~~licensee~~] may not perform services on a client if the practitioner [~~licensee~~] has reason to believe the client has a contagious condition such as head lice, nits, ringworm, conjunctivitis; or inflamed, infected, broken, raised or swollen skin or nail tissue; or an open wound or sore in the area to be serviced.

(c) Multi-use equipment, implements, tools or materials not addressed in this chapter must [~~shall~~] be cleaned and disinfected before use on each client. Except as otherwise provided in this chapter, chairs and dryers do not need to be disinfected prior to use for each client.

(d) Single-use equipment, implements, tools or porous items not addressed in this rule must [~~shall~~] be discarded after use on a single client.

(e) Electrical equipment that cannot be immersed in liquid must [~~shall~~] be wiped clean and disinfected prior to each use on a client.

(f) All clean and disinfected implements and materials when not in use must [~~shall~~] be stored in a clean, dry, debris-free environment including but not limited to drawers, cases, tool belts, rolling trays, or hung from hooks. They must be stored separate from soiled implements and materials. Ultraviolet electrical sanitizers are permissible for use as a dry storage container. Supplies not related to barbering or cosmetology [~~Non-cosmetology related supplies~~] must be stored in separate drawers or locations.

(g) Shampoo bowls[~~,~~] and manicure tables must [~~shall~~] be disinfected prior to use for each client.

(h) A container, large enough to fully immerse all tools and implements with liquid disinfectant must be used to disinfect combs, brushes, scissors or other equipment which may be safely immersed in a liquid disinfectant.

(i) [~~(h)~~] Floors in [~~cosmetology~~] establishments and schools must [~~shall~~] be thoroughly cleaned each day. Hair cuttings must be removed as soon as practicable [~~must be swept up and deposited in a closed receptacle after each hair cut~~].

(j) [~~(i)~~] All trash containers must be emptied daily and kept clean by washing or using plastic liners.

(k) [~~(j)~~] Hand washing facilities, including hot and cold running water must be provided for employees.

(l) [~~(k)~~] Clean towels must [~~shall~~] be used on each client. Towels must be washed in hot water and chlorine bleach.

(m) [~~(l)~~] Soiled towels must [~~shall~~] be removed after use on each client and deposited in a suitable receptacle.

(n) [~~(m)~~] Each [~~cosmetology~~] establishment and school must [~~shall~~] keep all products used in the conduct of their business properly labeled in compliance with OSHA requirements.

(o) [~~(n)~~] Hair cutting and shampoo capes must [~~shall~~] be kept clean. A clean (one-use) cape must [~~shall~~] be used for each client or a sanitary neck strip or towel must [~~shall~~] be used to keep the capes from coming into direct contact with the client's neck.

§83.103. Health and Safety Standards--Hair Cutting, Styling, Shaving, and Treatment Services.

(a) Practitioners must [~~Cosmetologists shall~~] wash their hands with soap and water, or use a liquid hand sanitizer, prior to performing any services on a client.

(b) All equipment, implements, tools and materials must [~~shall~~] be properly cleaned and disinfected in accordance with this rule prior to servicing each client.

(c) After each client, all non-single-use [~~the following~~] implements must [~~shall~~] be wiped with a clean paper or fabric towel and sprayed with either an EPA-registered bactericidal, fungicidal, and virucidal disinfectant, or a high-level disinfectant chlorine bleach solution. Equipment, implements, tools and materials to be cleaned and disinfected include but are not limited to combs and picks, haircutting shears, thinning shears/texturizers, razors, safety razors, edgers, guards, clippers, and perm rods.

(d) At the end of each day of use, the above items, along with any other tools, such as sectioning clips, brushes, combs [~~comb~~] and picks must [~~shall~~] be cleaned by manually scrubbing with soap and water or adequate methods, and then disinfected by one of the following methods:

(1) Complete immersion in an EPA-registered bactericidal, fungicidal, and virucidal disinfectant in accordance with manufacturer's instructions; or

(2) Complete immersion in a high-level disinfectant chlorine bleach solution.

§83.104. Health and Safety Standards--Esthetician Services.

(a) Practitioners must [~~Cosmetologists and estheticians shall~~] wash their hands with soap and water, or use a liquid hand sanitizer, prior to performing any services on a client. Gloves must [~~shall~~] be worn during any type of extraction.

(b) Equipment, implements, tools and materials must [~~shall~~] be properly cleaned and disinfected after servicing each client in accordance with [~~to~~] this rule.

(c) Facial chairs and beds, including headrest for each, must [~~shall~~] be cleaned and disinfected after providing service to each client. The chair or bed must [~~shall~~] be made of or covered in a non-porous material that can be disinfected.

(d) After each client, multiple use implements such as metal tweezers and comedone extractors must [~~shall~~] be cleaned and disinfected.

(e) The following implements are single-use items and must [~~shall~~] be discarded in a trash receptacle after use: cotton pads, cotton balls, gauze, wooden applicators, disposable gloves, tissues, thread, disposable wipes, lancets, fabric strips and other items used for a similar purpose as one or more of the items listed above.

(f) The following items that are used during services must [~~shall~~] be replaced with clean items for each client: disposable and terry cloth towels, hair caps, headbands, brushes, gowns, makeup brushes, spatulas that contact skin or products from multi-use containers, sponges and other items used for a similar purpose as one or more of the items listed above.

(g) Items subject to possible cross contamination such as creams, cosmetics, astringents, lotions, removers, waxes, moisturizers, masks, oils and other preparations must [~~shall~~] be used in a manner so as not to contaminate the remaining product. Applicators must [~~shall~~] not be re-dipped in product. Permitted procedures to avoid cross contamination are:

(1) Disposing of the remaining product before beginning services on each client; or

(2) Using a single-use disposable implement to apply product and disposing of such implement after use; or

(3) Using an applicator bottle to apply the product.

§83.105. Health and Safety Standards--Temporary Hair Removal Services.

(a) Practitioners must [~~Cosmetologists and estheticians shall~~] wash their hands with soap and water, or use a liquid hand sanitizer, prior to performing any services on a client.

(b) Practitioners must [~~Cosmetologists and estheticians shall~~] clean the areas of the client's body on which the service is to be administered.

(c) Practitioners [~~Cosmetologists and estheticians~~] performing temporary hair removal services involving the use of wax, depilatories, preparations or tweezing techniques must [~~shall~~] dispose of after each use all products or single use items that have been in contact with a client's skin.

(d) All wax pots must [~~shall~~] be cleaned and disinfected in accordance with manufacturer's recommendations. No applicators may [~~shall~~] be left standing in the wax at any time and wax may not be reused under any circumstances.

(e) All multi-use items must [~~shall~~] be properly cleaned, disinfected and sterilized or sanitized prior to each service, in accordance with this chapter.

§83.106. Health and Safety Standards--Manicure and Pedicure Services.

(a) Practitioners must [~~Cosmetologists and manicurists shall~~] clean their hands with soap and water or a hand sanitizer prior to performing any services.

(b) Practitioner must [~~Cosmetologists and manicurists shall~~] clean the areas of the client's body on which the service is to be administered.

(c) All metal manicure and pedicure tools must [~~shall~~] be properly cleaned, disinfected and sterilized or sanitized prior to each service, in accordance with this chapter, regardless of the tool's multiuse for only a single client or for multiple clients.

(d) After each client, the following implements must [~~shall~~] be cleaned, disinfected and sterilized or sanitized in accordance with the rule: metal pusher and files, cuticle nipper and scissors, metal tweezers, finger and toe nail clippers, and electric drill bits.

(e) The following implements are single-use items and must [~~shall~~] be discarded after use: orangewood sticks, cotton balls, nail wipes and disposable towels.

(f) Buffer blocks, porous nail files, pedicure files, callus rasps, natural pumice and foot brush, arbor, sanding bands, sleeves, heel and

toe pumice, exfoliating block (washable materials) must [~~shall~~] be cleaned by manually brushing or other adequate methods to remove all visible debris after each use, and then sprayed with an EPA-registered bactericidal, fungicidal, and virucidal disinfectant, or a [~~or a~~] high level disinfection chlorine bleach solution in accordance with this chapter. If a buffer block or porous nail file is exposed to broken skin (skin that is not intact) or unhealthy skin or nails, it must be discarded immediately after use in a trash receptacle.

(g) The following materials that are used during a manicure and pedicure must [~~shall~~] be replaced with new or clean articles for each client: terry cloth towels, finger bowls and spatulas that contact skin or skin products from multi-use containers.

§83.107. Health and Safety Standards--Electric Drill Bits.

(a) Only electric files, drills, or machines specifically designed and manufactured for use in the professional nail industry may be used in any [~~cosmetology~~] establishment or school for performing manicure or pedicure services. Craft, hardware, and hobby tools cannot be used under any circumstances.

(b) After each use, diamond, carbide, natural and metal bits must [~~shall~~] be cleaned by either

(1) using a brush;

(2) using an ultrasonic cleaner; or

(3) immersing the bit in acetone for 5 to 10 minutes.

(c) Immediately after cleaning all visible debris, diamond, carbide, natural and metal bits must [~~shall~~] be disinfected by complete immersion in an appropriate disinfectant between clients, then sterilized in accordance with this chapter.

(d) Buffing bits and chamois must [~~shall~~] be cleaned with soap and water at the end of every day of use in addition to being cleaned or replaced between clients.

§83.108. Health and Safety Standards--Foot Spas, Foot Basins, and Spa Liners.

(a) As used in this section, "whirlpool foot spa" or "spa" is defined as any basin using circulating water, either in a self-contained unit or in a unit that is connected to other plumbing in the establishment or school.

(b) After use upon each client, each whirlpool foot spa must [~~shall~~] be cleaned and disinfected in the following sequential manner.

(1) All water must [~~shall~~] be drained and all debris must [~~shall~~] be removed from the spa basin.

(2) The spa basin must be cleaned with soap or detergent and water.

(3) The spa basin must be disinfected with an EPA registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity which must be used according to the manufacturer's instructions.

(4) The spa basin must be wiped dry with a clean towel.

(c) At the end of each day, each whirlpool foot spa must [~~shall~~] be cleaned and disinfected in the following sequential manner.

(1) The screen and any other removable parts must [~~shall~~] be removed, all debris trapped behind the screen must [~~shall~~] be removed, and the screen and the inlet and any other removable parts must [~~shall~~] be washed with soap or detergent and water.

(2) Before replacing the screen, one of the following procedures must [~~shall~~] be performed:

(A) The screen and any other removable parts must [~~shall~~] be washed with a high level disinfection chlorine bleach solution [~~of one-third (1/3) cup of 5.25% chlorine bleach to one (1) gallon of water~~]; or

(B) The screen and any other removable parts must [~~shall~~] be totally immersed in an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity which must be used according to the manufacturer's instructions.

(3) The spa system must [~~shall~~] be flushed with soap and warm water for at least ten (10) minutes, after which the spa must [~~shall~~] be rinsed and drained.

(d) Every other week (bi-weekly), after cleaning and disinfecting as provided in this subsection, each whirlpool foot spa must [~~shall~~] be cleaned and disinfected in the following sequential manner.

(1) The spa basin must [~~shall~~] be filled completely with a high level disinfection chlorine bleach solution [~~water and one-third (1/3) cup of 5.25% bleach for each one (1) gallon of water~~].

(2) The spa system must [~~shall~~] be flushed for 5 to 10 minutes with the high level disinfection chlorine bleach solution [~~and water solution~~] or an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity which must be used according to the manufacturer's instructions and allowed to sit for 6 to 10 hours.

(3) The spa system must [~~shall~~] be drained and flushed with water before use upon a client.

(e) For whirlpool foot spas, a record must [~~shall~~] be made on a department-approved form of the date and time of each cleaning and disinfecting indicating whether the cleaning was a daily or bi-weekly cleaning. This record must [~~shall~~] be made at or near the time of cleaning and disinfecting and must [~~shall~~] indicate if a spa was not used during any individual work day.

(f) As used in this section "non-whirlpool foot basin" or "foot basin" is defined as any basin, tub, footbath, sink or bowl that holds non-circulating water. After use upon each client, each non-whirlpool foot basin must [~~shall~~] be cleaned and disinfected in the following sequential manner.

(1) All water must [~~shall~~] be drained and all debris must [~~shall~~] be removed from the foot basin.

(2) The inside surfaces of the foot basin must be scrubbed and cleaned of all visible residues with a clean brush, soap or detergent, and water.

(3) The foot basin must be disinfected with an EPA-registered disinfectant with demonstrated bactericidal, fungicidal and virucidal activity which must be used according to the manufacturer's instructions.

(4) The foot basin must be rinsed, emptied, and wiped dry with a clean towel.

(g) For non-whirlpool foot basins, a record must [~~shall~~] be made on a department-approved form of the date and time of each cleaning and disinfecting. The record must [~~shall~~] be made at or near the time of cleaning and disinfecting and must [~~shall~~] indicate if the foot basin was not used during any individual work day.

(h) As used in this section "disposable spa liner" or "spa liner" is defined as a plastic liner designed to be placed within a whirlpool foot spa and discarded after a single use and which is equipped with a single "non-adhesive" heat-sealed drain tab which, when pulled, allows water to empty directly into a whirlpool foot spa drain.

(i) As used in this section "portable whirlpool jet" or "jet" is defined as a magnetic or other circulating device, designed to be placed within a whirlpool foot spa basin in order to circulate water in spas in which disposable spa liners are used.

(j) Disposable spa liners and portable whirlpool jets may be used in providing spa services to clients. When used, the following sequential procedures must [~~shall~~] be performed.

(1) After use upon a client, the heat sealed tab must [~~shall~~] be pulled allowing the water to empty directly into the [~~cosmetology~~] establishment's or school's plumbing system.

(2) The spa liner must [~~shall~~] be discarded in a covered trash receptacle.

(3) The portable whirlpool jet must [~~shall~~] be completely immersed for 5 to 10 minutes in an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity which must be used according to the manufacturer's instructions.

(4) The jet must [~~shall~~] be rinsed with warm water and drained.

(5) All surfaces of the spa basin and foot rest must [~~shall~~] be wiped with EPA-registered disinfectant wipes.

(k) For disposable spa liners and whirlpool jets, a record must [~~shall~~] be made on a department-approved form indicating the time and date when the spa liner was used and discarded and when the jet was used and disinfected and must [~~shall~~] indicate if the jet was not used during a work day.

(l) Cleaning and disinfecting records for foot spas, foot basins, spa liners and jets must [~~shall~~] be made available upon request by either a client or a department representative and must [~~shall~~] be retained for inspection for at least 60 days.

(m) A foot spa, foot basin or jet for which documentation is not maintained in accordance with this section must be removed from service and not used again until it has been cleaned and disinfected in accordance with the requirements of this section and the records have been properly updated. When a foot spa, foot basin or jet is removed from service for any reason, the record must indicate the date of removal from service.

(n) Foot spa and foot basin chairs must [~~shall~~] be cleaned and disinfected after service is provided to each client. The chair must [~~shall~~] be made of or covered in a non-porous material that can be disinfected.

§83.110. Health and Safety Standards--Hair Weaving Services.

(a) Practitioners must [~~Cosmetologists, wig specialists, and hair weavers shall~~] wash their hands with soap and water, or use a liquid hand sanitizer, prior to performing any services on a client.

(b) All equipment, implements, tools and materials must [~~shall~~] be properly cleaned and disinfected in accordance with this rule prior to servicing each client.

(c) Hair extensions, tracks, needles, and thread must [~~shall~~] be stored in a bag or covered container until ready to use. No unrelated items may [~~shall~~] be stored in the same bag or container.

(d) Needles, combs, and hair clips must [~~shall~~] be sprayed with a disinfectant before use.

§83.111. Health and Safety Standards--Blood and Body Fluids.

(a) Blood can carry many pathogens. For this reason, licensees should never touch a client's open sore or wound. Powdered alum, styptic powder, or a cyanoacrylate (e.g. liquid-type bandage) may be used to contact [~~contract~~] the skin to stop minor bleeding, and should be applied to the open area with a disposable cotton-tipped instrument that is immediately discarded after application.

(b) In the case of blood or body fluid contact on any surface area such as a table, chair, or the floor, an EPA-registered hospital grade disinfectant, a tuberculocidal disinfectant, or a blood and body fluid cleanup and disinfection chlorine [~~10%~~] bleach solution must [~~(one-and-three quarters (1 3/4) cups of household (5.25%) bleach to one gallon of water) shall~~] be used per manufacturer's instructions immediately to clean up all visible blood or body fluids.

(c) If any non-porous instrument is contacted with blood or body fluid, it must [~~shall~~] be immediately cleaned and disinfected using an EPA-registered hospital grade disinfectant, a tuberculocidal disinfectant in accordance with the manufacturer's instructions, or totally immersed in a blood and body fluid cleanup and disinfection chlorine [~~10%~~] bleach solution [~~(one-and-three quarters (1 3/4) cups of household (5.25%) bleach to one gallon of water)~~] for 5 minutes.

(d) If any porous instrument contacts blood or body fluid, it must [~~shall~~] be immediately double-bagged and discarded in a closed trash container or biohazard box.

§83.112. Health and Safety Standards--Prohibited Products or Practices.

(a) Practitioners [~~Licensees~~] may not use any of the following substances or products in performing barbering or cosmetology services:

(1) Methyl Methacrylate Liquid Monomers, (MMA) [~~a.k.a., MMA~~].

(2) Razor-type callus shavers designed and intended to cut growths of skin such as corns and calluses, e.g., credo blades.

(3) Alum or other astringents in stick or lump form. (Alum or other astringents in powder or liquid form are acceptable.)

(4) Fumigants such as formalin (formaldehyde) tablets or liquids.

(b) Possession on licensed premises of any item listed in this section is a violation under this chapter.

(c) The use of any product, preparation or procedure that comes into contact with or penetrates the dermis layer of the skin is prohibited.

§83.113. Health and Safety Standards--FDA.

(a) Practitioners may [~~Licensees shall~~] not use any product in providing a service authorized under the Act that is banned or deemed to be poisonous or unsafe by the United States Food and Drug Administration (FDA) or other local, state, or federal governmental agencies responsible for making such determinations.

(b) Possession or storage on licensed premises of any item banned or deemed to be poisonous or unsafe by the FDA or other governmental agency will [~~shall~~] be considered prima facie evidence of its use.

(c) For the purpose of performing services authorized under the Act, no practitioner may [~~licensee shall~~] buy, sell, use, or apply to any person liquid monomeric methyl methacrylate (MMA).

§83.114. Health and Safety Standards--Establishments and Schools.

(a) Establishments and schools must [~~shall~~] keep the floors, walls, ceilings, shelves, furniture, furnishings, and fixtures clean and in good repair. Any cracks, holes, or other similar disrepair not readily accessible for cleaning must [~~shall~~] be repaired or filled in to create a smooth, washable surface.

(b) All floors in areas where services under the Act are performed, including restrooms and areas where chemicals are mixed or where water may splash, must be of a material which is not porous or absorbent and is easily washable, except that anti-slip applications or plastic floor coverings may be used for safety reasons. Carpet is permitted in all other areas.

(c) Plumbing fixtures, including toilets and wash basins, must [~~shall~~] be kept clean. They must be free from cracks and similar disrepair that cannot be readily accessible for cleaning.

(d) Each establishment and school must have suitable plumbing that provides an adequate and readily available supply of hot and cold running water at all times and that is connected for drainage of sewage and potable water within the areas where work is performed and supplies dispensed.

(e) Every establishment and school must [~~shall~~] provide at least one restroom located on or near the licensed premises [~~of the establishment~~]. For public safety, chemical supplies may [~~shall~~] not be stored in the restroom.

(f) Food or beverages may [~~shall~~] not be prepared on licensed premises for sale. Pre-packaged food or beverages may be sold to or consumed by clients.

(g) For public health and safety, licensed premises must [~~shall~~] eliminate any strong odors through adequate ventilation, including but not limited to, exhaust fans and air filtration to exhaust chemicals and fumes away from the public area and to provide for the input of fresh air.

(h) Licensed premises may [~~shall~~] not be utilized for living or sleeping purposes, or any other purpose that would tend to make the premises unsanitary, unsafe, or endanger the health and safety of the public. An establishment or school that is attached to a residence must have an entrance that is separate and distinct from the residential entrance. Any door between a residence and a licensed facility must be closed during business hours.

(i) Only service animals are allowed in establishments and schools. Covered aquariums are allowed provided that they are maintained in a sanitary condition.

§83.115. Health and Safety Standards--Eyelash Extension Application Services.

(a) A practitioner [~~licensee~~] offering the eyelash extension application service must [~~shall~~] wash the practitioner's [~~his or her~~] hands with soap and water prior to performing any services on a client.

(b) Equipment, implements, and materials must [~~shall~~] be properly cleaned and disinfected prior to providing services.

(c) Chairs and beds, including headrests, must [~~shall~~] be cleaned and disinfected after providing services to each client. The chair and beds must [~~shall~~] be made of or covered in a non-porous material that can be disinfected.

(d) After each client, the following implements must [~~shall~~] be cleaned and disinfected: tweezers, nasal aspirator or electric eyelash dryer and other items used for a similar purpose.

(e) The following implements are single-use items and must [~~shall~~] be discarded in a trash receptacle after use: disposable gloves, tissues, disposable wipes, fabric strips, surgical tape, eye pads, extensions, cotton swabs, face mask, brushes, extension pads and other items used for a similar purpose.

(f) The following items that are used during services must [~~shall~~] be replaced with clean items for each client: disposable and terry cloth towels, hair caps, headbands, brushes, gowns, spatulas that contact skin or products from multi-use containers.

(g) A practitioner must [~~licensee shall~~] use only properly labeled semi-permanent glue and semi-permanent glue remover that must be used according to the manufacturer's instructions.

(h) Extensions must be stored in a sealed bag or covered container and must [~~shall~~] be kept in a clean dry, debris-free storage area.

§83.120. Technical Requirements--Curriculum Standards (before August 1, 2023).

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

[~~(c) Instructor Curricula.~~]
[~~Figure: 16 TAC §83.120(c)~~]

(c) [~~(d)~~] Distance Education.

(1) Schools offering distance education may not designate more than 25% of the total hours in each course as theory hours.

(2) A student may obtain the following distance education hours:

(A) a maximum of 250 hours out of the 1,000 hour operator course;

(B) a maximum of 75 hours out of the 300 hour class A barber to operator course;

(C) maximum of 150 hours out of the 600 hour manicure course;

(D) a maximum of 188 hours out of the 750 hour esthetician course;

(E) a maximum of 300 hours out of the 1200 hour esthetician/manicurist course;

(F) a maximum of 80 hours out of the 320 hour eyelash extension course; and

(G) a maximum of 75 hours out of the 300 hour hair-weaving course.[~~;~~]

[~~(H) a maximum of 188 hours out of the 750 hour instructor course; and~~]

[~~(I) a maximum of 125 hours out of the 500 hour instructor course.~~]

(d) [~~(e)~~] Field Trips.

(1) Cosmetology related field trips are permitted under the following conditions for students enrolled in the following courses. The [~~and the~~] guidelines under this subsection must be strictly followed.

(2) A student may obtain the following field trip hours:

(A) a maximum of 50 hours out of the 1,000 hour [~~hours~~] operator course;

(B) a maximum of 30 hours for the manicure course;

(C) a maximum of 30 hours for the esthetician course;

(D) a maximum of 60 hours for the esthetician/manicurist course; and

(E) a maximum of 15 hours for the eyelash extension course.[~~;~~]

[~~(F) a maximum of 30 hours for students taking the 750 hour instructor course; and~~]

[~~(G) a maximum of 20 hours for students taking the 500 hour instructor course.~~]

(3) Unless provided by this subsection, field trips are not allowed for specialty courses.

(4) Students must be under the supervision of an [~~a licensed~~] instructor from the school where the student is enrolled at all times during the field trip. The instructor-student ratio required in a school is required on a field trip.

(5) Complete documentation is required, including student names, instructor names, activity, location, date, and duration of the activity.

(6) No hours are allowed for travel.

(7) Prior department approval is not required.

(e) This section and §82.120 provide the curriculum standards that are effective before August 1, 2023. Section 83.202 provides the curriculum standards that are effective on or after August 1, 2023.

§83.200. License Requirements--Individuals (on or after September 1, 2023).

(a) To be eligible for a practitioner license, an applicant must:

(1) submit a completed application in the manner prescribed by the department;

(2) pay the applicable fee required under §83.80;

(3) be at least 17 years of age;

(4) have completed the hours of instruction required under §83.120 at a licensed school;

(5) pass a written and practical examination required under §83.21;

(6) have not committed an act that constitutes a ground for denial of the license; and

(7) meet other applicable requirements of the Act and this chapter.

(b) A person who holds both an active esthetician license and an active manicurist license is eligible for an esthetician/manicurist specialty license by submitting a completed application in the manner prescribed by the department and paying the required fee under §83.80.

(c) A person who holds both an active hair weaving specialist license and an active esthetician license is eligible for a hair weaving specialist/esthetician license by submitting a completed application in the manner prescribed by the department and paying the required fee under §83.80.

(d) To be eligible for a student permit, an applicant must:

(1) submit a completed application in the manner prescribed by the department; and

(2) pay the fee required under §83.80.

(e) This section provides the minimum requirements for practitioner license applications received by the department on or after September 1, 2023. Until that date, §83.20 and §82.20 provide the minimum requirements.

§83.201. Fees (on or after September 1, 2023).

(a) Application fees.

(1) Class A Barber License or Operator License--$50

(2) Specialty Practitioner License (Esthetician, Manicurist, Esthetician/Manicurist, Eyelash Extension, Hair Weaving, or Hair Weaving/Esthetician)--$50

(3) Full-Service Establishment License--$78

(4) Specialty Establishment License--$78

(5) Mini-Establishment License--$70

(6) Mobile Establishment License--$78

(7) School License--$380

(8) Student Permit--$25

(b) Renewal fees.

(1) Class A Barber License or Operator License--$50

(2) Specialty Practitioner License (Esthetician, Manicurist, Esthetician/Manicurist, Eyelash Extension, Hair Weaving, or Hair Weaving/Esthetician)--$50

(3) Full-Service Establishment License--$78

(4) Specialty Establishment License--$78

(5) Mini-Establishment License--$70

(6) Mobile Establishment License--$78

(7) School License--$280

(c) Substantial Equivalence Fee--$50

(d) Inactive License Status.

(1) Renewal of license on inactive status--renewal fees as stated in §83.80(b).

(2) Change from inactive status to active status--$25

(e) Revised or Duplicate License--$25

(f) Law and Rules Book--$14

(g) School (public and private) Inspection Fees--$200

(h) Verification of license to other states--$15

(i) Student transcript fee--$5

(j) Late renewals fees for licenses under this chapter are provided under §60.83 (relating to Late Renewal Fees).

(k) All fees are nonrefundable, except as otherwise provided by law or commission rule.

(l) Law and rule book fee is included in the application and renewal fees for student, individual, school, and establishment licenses and permits.

(m) This section provides the fees that are required on or after September 1, 2023. Until that date, §83.80 and §82.80 provide the required fees.

§83.202. Technical Requirements--Curriculum Standards (on or after August 1, 2023).

(a) The cosmetology operator and class A barber curricula consist of 1,000 clock hours or equivalent credit hours, as follows:

(1) Theory: anatomy and physiology; disorders of the skin, scalp, hair and nails; chemistry (haircoloring, chemical waving, and relaxing); bacteriology, sterilization and sanitation, health, safety, first aid, laws and rules; tools and equipment; hair care and related theory; business skills and establishment management. 250 hours.

(2) Practice: haircutting; hairstyling; hair and scalp treatments, scalp massage; hairweaving, extensions; chemical textures and applications; face and neck massage and treatments; facial hair removal; manicuring; chemistry (haircoloring, chemical waving, and relaxing); waxing and removing body hair; safety, first aid, and sanitation; customer service and professional ethics. 450 hours.

(3) The standards for the operator curriculum must include Specialty Practice: eyelash semi-permanent extensions; advanced hair care and advanced chemical services; and related practices. 300 hours.

(4) The standards for the class A barber curriculum must include Specialty Practice: shaving with any razor type and razor techniques; mustache and beard care; advanced hair care and men's haircutting; and related practices. 300 hours.

(b) The class A barber to cosmetology operator curriculum consists of 300 clock hours or equivalent credit hours, as follows:

(1) Theory: anatomy and physiology; eye shapes; client protection and adverse reactions; advanced hair care and advanced chemical services; health, safety and related theory; sanitation, laws and rules. 75 hours.

(2) Specialty Practice: eyelash extension application, isolation and separation; advanced hair care and advanced chemical services; and related practices. 225 hours.

(c) The cosmetology operator to class A barber curriculum consists of 300 clock hours or equivalent credit hours, as follows:

(1) Theory: barber history; anatomy and physiology; instruments; razors; beard and mustache design; health, safety and related theory; sanitation, laws and rules. 75 hours.

(2) Specialty Practice: shaving with any razor type and razor techniques; mustache and beard care; advanced hair care and men's haircutting; and related practices. 225 hours.

(d) Specialist Curricula.

(1) The esthetician curriculum consists of 750 clock hours or equivalent credit hours, as follows:

(A) Theory: anatomy and physiology; machines and related equipment; basic facials; chemistry; care of client; superfluous hair removal and related theory; sanitation, health and safety; law and rules; business management. 188 hours.

(B) Practice: facial treatments, cleansing, masking, and therapy; chemistry machines and related equipment; superfluous hair removal; sanitation, first aid, health and safety. 262 hours.

(C) Specialty Practice: advanced facial treatments and superfluous hair removal using devices or preparations; makeup; semi-permanent eyelash extension applications; and related practices. 300 hours.

(2) The manicurist curriculum consists of 600 clock hours or equivalent credit hours, as follows:

(A) Theory: anatomy and physiology; nail structure and growth; equipment and implements; bacteriology, sanitation and safety; hazardous chemicals and ventilation; basic manicures and pedicures; business management; laws and rules. 150 hours.

(B) Practice: repair work, massage, buffing and application of polish and artificial nails; cosmetic fingernails, extensions, sculptured nails, tips, wraps, fiberglass/gels and odorless products. 150 hours.

(C) Specialty Practice: professional practices; advanced manicuring and pedicuring; advanced techniques, preparations and applications. 300 hours.

(3) The manicurist/esthetician curriculum consists of 800 clock hours or equivalent credit hours, as follows:

(A) Theory: anatomy and physiology; machines and related equipment; chemistry; care of client; basic facials; superfluous hair removal and related theory; nail structure and growth; equipment and implements; hazardous chemicals and ventilation; basic manicures and pedicures; business management; bacteriology, sanitation, health, and safety; laws and rules. 200 hours.

(B) Specialty Manicure Practice: repair work, massage, buffing and application of polish and artificial nails; cosmetic fingernails, extensions, sculptured nails, tips, wraps, fiberglass/gels and odorless products; professional practices, techniques and preparations; sanitation, first aid, health and safety. 300 hours.

(C) Specialty Esthetician Practice: facial treatments, cleansing, masking, and therapy; chemistry machines and related equipment; superfluous hair removal; devices or preparations; makeup; semi-permanent eyelash extension applications; sanitation, first aid, health and safety. 300 hours.

(4) The eyelash extension specialist curriculum consists of 320 clock hours or equivalent credit hours, as follows:

(A) Theory: eye shapes and eyelash growth; supplies and related equipment; contagious diseases and adverse reactions; sanitation, first aid, health and safety; client protection; business management, laws and rules. 80 hours.

(B) Specialty Practice: Semi-permanent eyelash extension isolation, separation and application. 240 hours.

(5) The hair weaving specialist curriculum consists of 300 clock hours or equivalent credit hours, as follows:

(A) Theory: basic hair weaving; anatomy and physiology; scalp and skin conditions, lesions and diseases; structure and composition; sterilization methods; chemistry and client protection; sanitation, health and safety; business management, laws and rules. 75 hours.

(B) Specialty Practice: hair weaving, repair, weft removal, sizing and finishing; procedures and hair weaving/braiding skills; compounds, mixtures and cosmetic applications; equipment, supplies and preparations. 225 hours.

(6) The hair weaving specialist/esthetician curriculum consists of 700 clock hours or equivalent credit hours, as follows:

(A) Theory: anatomy and physiology; scalp and skin conditions, lesions and diseases; structure and composition; basic hair weaving; sterilization methods; chemistry and client protection; basic facials; machines and related equipment; chemistry; care of client; superfluous hair removal and related theory. 175 hours.

(B) Specialty Hair Weaving Practice: hair weaving, repair, weft removal, sizing and finishing; procedures and hair weaving/braiding skills; compounds, mixtures and cosmetic applications; equipment, supplies and preparations. 225 hours.

(C) Specialty Esthetician Practice: facial treatments, cleansing, masking, and therapy; chemistry machines and related equipment; superfluous hair removal; devices or preparations; makeup; semi-permanent eyelash extension applications; sanitation, first aid, health and safety. 300 hours.

(e) Distance Education.

(1) Schools offering distance education may not designate more than 25% of the total hours in each course as theory hours.

(2) A student may obtain the following distance education hours:

(A) a maximum of 250 hours out of the 1,000 hour cosmetology operator course;

(B) a maximum of 250 hours out of the 1,000 hour class A barber course;

(C) a maximum of 75 hours out of the 300 hour class A barber to cosmetology operator course;

(D) a maximum of 75 hours out of the 300 hour cosmetology operator to class A barber course;

(E) maximum of 150 hours out of the 600 hour manicurist course;

(F) a maximum of 188 hours out of the 750 hour esthetician course;

(G) a maximum of 200 hours out of the 800 hour esthetician/manicurist course;

(H) a maximum of 80 hours out of the 320 hour eyelash extension specialist course;

(I) a maximum of 75 hours out of the 300 hour hair weaving specialist course; and

(J) a maximum of 175 hours out of the 700 hour hair weaving specialist/esthetician course.

(f) Field Trips.

(1) Barbering and cosmetology related field trips are permitted under the following conditions for students enrolled in the following courses. The guidelines under this subsection must be strictly followed.

(2) A student may obtain the following field trip hours:

(A) a maximum of 100 hours out of the 1,000 hour cosmetology operator course;

(B) a maximum of 100 hours out of the 1,000 hour class A barber course;

(C) a maximum of 60 hours for the manicurist course;

(D) a maximum of 75 hours for the esthetician course;

(E) a maximum of 80 hours for the esthetician/manicurist course;

(F) a maximum of 32 hours for the eyelash extension specialist course;

(G) a maximum of 30 hours for the hair weaving specialist course; and

(H) a maximum of 70 hours for the hair weaving specialist/esthetician course.

(3) Students must be under the supervision of an instructor from the school where the student is enrolled at all times during the field trip. The instructor-student ratio required in a school is required on a field trip.

(4) Complete documentation is required, including student names, instructor names, activity, location, date, and duration of the activity.

(5) No hours are allowed for travel.

(6) Prior department approval is not required.

(g) The department may allow students previously enrolled in a 1,200-hour manicurist/esthetician program to transfer completed hours to an 800-hour manicurist/esthetician program if the hours meet the required technical standards. Upon request of a student, a school must apply completed hours toward a department-approved 800-hour manicurist/esthetician program if the school has such a program, or allow the student to transfer to another school.

(h) This section provides the curriculum standards that are effective on or after August 1, 2023. Until that date, §83.120 and §82.120 provide the required curriculum standards.

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

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Brad Bowman
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CHAPTER 83. COSMETOLOGISTS

16 TAC §§83.31, 83.50, 83.52, 83.54, 83.65, 83.109

STATUTORY AUTHORITY

The proposed repeals are proposed under Texas Occupations Code, Chapters 51 and 1603, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt repeals as necessary to implement these chapters and any other law establishing a program regulated by the Department. The proposed repeals are also proposed under former Texas Occupations Code, Chapters 1601 and 1602, which were repealed by HB 1560, Article 3, Section 3.33, but remain in effect by authority of the transition provisions in HB 1560, Article 3, Sections 3.34-3.42. The proposed repeals are also proposed under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or the holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 1603. No other statutes, articles, or codes are affected by the proposed repeals.

§83.31. Licenses--License Terms.

§83.50. Inspections--General.

§83.52. Periodic Inspections.

§83.54. Corrective Modifications Following Inspection.

§83.65. Advisory Board on Cosmetology.

§83.109. Health and Safety Standards--Wig and Hairpiece Services.

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

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

The Texas Education Agency (TEA) proposes amendments to §§89.1080, 89.1185, and 89.1195, concerning special education services. The proposed amendments would provide updates and clarifications regarding special education complaints and due process hearings.

BACKGROUND INFORMATION AND JUSTIFICATION: The rules in Chapter 89, Subchapter AA, address provisions for special education services, including general provisions and clarification of federal regulations and state law. The proposed amendments would update rules as follows.

Division 2. Clarification of Provisions in Federal Regulations and State Law

The proposed amendment to §89.1080, Regional Day School Program for the Deaf, would replace "hearing impairment" with "deaf or hard of hearing." Additional technical edits would also be made.

Division 7. Dispute Resolution

The proposed amendment to §89.1185, Hearing Procedures, would clarify that summary proceedings in a special education due process hearing may be used only when both parties in the hearing agree to use the summary process.

The proposed amendment to §89.1195, Special Education Complaint Resolution, would specify, in subsection (a), that TEA's complaint resolution process allows for investigation and issuance of findings regarding alleged violations of state special education statute or administrative rule. Subsection (c) would be amended to provide clarification on the sixty-calendar-day timeline for resolving a special education complaint and provide clarification on the one-calendar-year statute of limitations for a special education complaint. The proposed amendment to subsection (d) would allow TEA to provide a copy of a special education complaint to the public education agency against which the complaint is filed if the complainant does not do so. The proposed amendment to subsection (e)(1)(B) would clarify requirements in 34 Code of Federal Regulations (CFR), §300.504, regarding the provision of the Notice of Procedural Safeguards to parents upon the filing of the first state complaint during a school year. Proposed new subsections (h) and (i) would explain TEA's general supervisory authority under 34 CFR, §300.600, to investigate credible complaints related to federal and state special education requirements even if a complaint does not meet federal requirements in 34 CFR, §§300.151-300.153. The rule would clarify what a "credible complaint" is and set out steps TEA can take to address a credible complaint that does not meet federal requirements in 34 CFR, §§300.151-300.153. Proposed new subsection (j) would provide for a reconsideration process for credible complaints investigated under TEA's general supervisory authority.

FISCAL IMPACT: Jennifer Alexander, deputy commissioner for special populations, 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 existing regulations by providing the agency with a mechanism for addressing credible allegations of Individuals with Disabilities Education Act (IDEA) violations that do not qualify as a state complaint.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Alexander 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 clarification for members of the public and school districts regarding due process hearings and special education complaints as well as a mechanism for the agency to address credible allegations of IDEA violations that are not state complaints. 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 September 23, 2022, and ends October 24, 2022. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/. Public hearings to solicit testimony and input on the proposal will be held at 9:00 a.m. on October 6 and 7, 2022, via Zoom. The public may participate in the October 6 hearing virtually by linking to the hearing at *https://us02web.zoom.us/j/89294633839.* The public may participate in the October 7 hearing virtually by linking to the hearing at *https://us02web.zoom.us/j/85463744981.* The public may attend one or both hearings. Anyone wishing to testify at one of the hearings must sign in between 8:30 a.m. and 9:00 a.m. on the day of the respective hearing. Each hearing will conclude once all who have signed in have been given the opportunity to comment. Each individual's comments are limited to three minutes, and each individual may comment only once. Both hearings will be recorded and made available publicly. Questions about the hearings should be directed to *spedrule@tea.texas.gov.*

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES

DIVISION 2. CLARIFICATION OF PROVISIONS IN FEDERAL REGULATIONS AND STATE LAW

19 TAC §89.1080

STATUTORY AUTHORITY. The amendment is proposed under 34 Code of Federal Regulations (CFR), §300.149 and §300.600, which set out the state's general supervisory authority to identify and correct noncompliance related to special education; 34 CFR, § §300.151-300.153, which set out requirements related to the state's special education complaints process; 34 CFR, §300.504, which sets out requirements related to the provision of the Notice of Procedural Safeguards; 34 CFR, §§300.512, 300.515, 300.516, and 300.532, which set out requirements and procedures related to special education due process hearings and appeals; and Texas Education Code, §29.001, which sets out the state's general authority and obligation to develop, and modify as necessary, a statewide design, consistent with federal law, for the delivery of services to children with disabilities in this state that includes rules for the administration and funding of the special education program so that a free appropriate public education is available to all of those children between the ages of 3 and 21.

CROSS REFERENCE TO STATUTE. The amendment implements 34 Code of Federal Regulations, §§300.149, 300.151-300.153, 300.504, 300.512, 300.515, 300.516, 300.532, and 300.600, and Texas Education Code, §29.001.

§89.1080. Regional Day School Program for the Deaf.

In accordance with [~~the~~] Texas Education Code [~~(TEC)~~], §§30.081-30.087, local school districts shall have access to regional day school programs for the deaf operated by school districts at sites previously established by the State Board of Education [~~(SBOE)~~]. Any student who is deaf or hard of hearing with a disability that [~~has a hearing impairment which~~] severely impairs processing linguistic information through hearing, even with recommended amplification, and that [~~which~~] adversely affects educational performance shall be eligible for consideration for the Regional Day School Program for the Deaf, subject to the admission, review, and dismissal [~~(ARD)~~] committee recommendations.

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
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Texas Education Agency
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DIVISION 7. DISPUTE RESOLUTION

19 TAC §89.1185, §89.1195

STATUTORY AUTHORITY. The amendments are proposed under 34 Code of Federal Regulations (CFR), §300.149 and §300.600, which set out the state's general supervisory authority to identify and correct noncompliance related to special education; 34 CFR, §§300.151-300.153, which set out requirements related to the state's special education complaints process; 34 CFR, §300.504, which sets out requirements related to the provision of the Notice of Procedural Safeguards; 34 CFR, §§300.512, 300.515, 300.516, and 300.532, which set out requirements and procedures related to special education due process hearings and appeals; and Texas Education Code, §29.001, which sets out the state's general authority and obligation to develop, and modify as necessary, a statewide design, consistent with federal law, for the delivery of services to children with disabilities in this state that includes rules for the administration and funding of the special education program so that a free appropriate public education is available to all of those children between the ages of 3 and 21.

CROSS REFERENCE TO STATUTE. The amendments implement 34 Code of Federal Regulations, §§300.149, 300.151-300.153, 300.504, 300.512, 300.515, 300.516, 300.532, and 300.600, and Texas Education Code, §29.001.

§89.1185. Hearing Procedures.

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

(d) Except as modified or limited by the provisions of 34 CFR, §§300.507-300.514 or 300.532, or this division, the Texas Rules of Civil Procedure will govern the proceedings at the hearing and the Texas Rules of Evidence will govern evidentiary issues. Other than a sufficiency determination made in accordance with 34 CFR, §300.508, any summary proceedings in a hearing on a due process complaint that would serve to limit or conflict with either party's hearing rights provided by 34 CFR, §§300.507-300.514 or 300.532, or this division, including the right to present evidence and confront, cross-examine, and compel the attendance of witnesses complaint, may be used only when both parties consent to use the summary process.

(e) - (p) (No change.)

§89.1195. Special Education Complaint Resolution.

(a) In accordance with 34 Code of Federal Regulations (CFR), §300.151, the Texas Education Agency (TEA) has established a complaint resolution process that provides for the investigation and issuance of findings regarding alleged violations of Part B of the Individuals with Disabilities Education Act (IDEA) or a state special education statute or administrative rule.

(b) (No change.)

(c) A complaint must be filed with the TEA by electronic mail, mail, hand-delivery, or facsimile. The TEA has developed a form that may be used by persons or organizations filing a complaint. The form is available on request from the TEA and is also available on the TEA website. The complaint timeline will commence on the business day that TEA receives the complaint. If a complaint is received on a day other than a business day, the [~~The~~] complaint timeline will commence on the first [~~next~~] business day after the day on which the TEA receives the complaint. The one-calendar-year statute of limitations for a complaint will be determined based on the day that the complaint timeline commences.

(d) If a complaint does not meet the requirements outlined in subsection (b) of this section, the TEA must notify the complainant of the deficiencies in the complaint. The TEA cannot investigate a complaint through the process set out in 34 CFR, §§300.151-300.153, and this section if the complaint does not meet the requirements in subsection (b) of this section except that, if the complainant did not provide a copy of the complaint to the public education agency that is the subject of the complaint at the same time that the complaint is filed with the TEA, TEA will provide a copy of the complaint to the public education agency. In this case, the timelines set out in subsection (c) of this section commence on the day that the TEA provides the complaint to the public education agency.

(e) Upon receipt of a complaint that meets the requirements of this section, the TEA must initiate an investigation to determine whether the public education agency is in compliance with applicable law and regulations in accordance with the following procedures.

(1) The TEA must send written notification to the parties acknowledging receipt of a complaint.

(A) (No change.)

(B) In accordance with 34 CFR, §300.504, upon receipt of the first special education complaint filed by a parent during a school year, TEA will provide an electronic copy of the Notice of Procedural Safeguards to the parent, and the public education agency against which the complaint is filed must provide the parent with a hard copy of the Notice of Procedural Safeguards unless that parent has elected, in accordance with 34 CFR, §300.505, to receive the required notice by electronic mail, if the public education agency makes that option available.

(C) [~~(B)~~] The public education agency must provide the TEA with a written response to the complaint and all documentation and information requested by the TEA. The public education agency must forward its response to the parent who filed the complaint at the same time that the response is provided to the TEA. The public education agency may also provide the parent with a copy of the documentation and information requested by the TEA. If the complaint was filed by an individual other than the student's parent, the public education agency must forward a copy of the response to that individual only if written parental consent has been provided to the public education agency.

(2) - (7) (No change.)

(f) - (g) (No change.)

(h) In exercising its general supervisory authority under 34 CFR, §300.149 and §300.600, the TEA may resolve any other credibly alleged violation of IDEA or a state special education statute or administrative rule that it receives even if a sufficient complaint is not filed with the TEA in accordance with 34 CFR, §§300.151-300.153, and this section. In doing so, the TEA may take one or more of the following actions:

(1) requesting a response and supporting documentation from a public education agency against which a credible violation of IDEA or a state special education statute or administrative rule has been alleged;

(2) conducting a desk or on-site investigation of a public education agency;

(3) making a determination regarding the allegation(s); and

(4) requiring a public education agency to implement corrective actions to address any identified noncompliance.

(i) For the purposes of subsection (h) of this section, anonymous complaints, complaints that are received outside the one-calendar-year statute of limitations for a special education complaint, and complaints that do not include sufficient information or detail for the TEA to determine that an alleged violation of special education requirements may have occurred will not be considered to be credible complaints.

(j) If the public education agency against which a complaint is received under subsection (h) of this section believes that TEA made an incorrect determination of noncompliance, the public education agency may submit a written request for reconsideration to the TEA within 15 calendar days of the date that TEA issued its findings. The reconsideration request must identify the asserted error and include any documentation to support the claim. The TEA will consider the reconsideration request and provide a written response to the public education agency within 45 calendar days of receipt of the request. The filing of a reconsideration request must not delay a public education agency's implementation of any corrective actions required by the TEA.

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CHAPTER 152. COMMISSIONER'S RULES CONCERNING EXAMINATION REQUIREMENTS

19 TAC §152.1001

The Texas Education Agency (TEA) proposes an amendment to §152.1001, concerning exceptions to examination requirements

individuals certified outside the state. The proposed amendment would implement House Bill (HB) 139, 87th Texas Legislature, Regular Session, 2021, by adding military community members to the population of educators licensed outside the state and eligible to qualify for an exception to examination requirements in Texas. The proposed amendment would also provide additional edits to improve the readability and applicability of the rules and support continued consistency in completion of the test exemption review process.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 152.1001 outlines the requirements an educator licensed outside the state must meet to qualify for exemption from Texas certification testing requirements.

HB 139, 87th Texas Legislature, Regular Session, 2021, amended TEC, §21.052(a-1), to specifically reference military service members, military spouses, and military veterans. To implement HB 139, the proposed amendment to subsection (a) would emphasize that military service members, military spouses, and military veterans are within the population of educators licensed outside the state and eligible for consideration of an exemption from in-state testing requirements for Texas certificate issuance. In addition, subsection (b) would include new definitions for "military service member," "military spouse," and "military veteran."

Subsection (b) would also be amended to add definitions for "certification class," "educator," and "educator from outside the state" to ensure clarity and consistency throughout the chapter. The definition for "standard certificate" would be updated to clarify it is a credential issued outside of Texas to serve in the role of a classroom teacher. The reference to 19 TAC §230.33, *Classes of Certificates,* would be deleted since these educators are applicants for certification and have not yet received a Texas standard certificate issued by the State Board for Educator Certification (SBEC). The definition for "Texas review of credentials" would be updated to reference the SBEC rules that outline the processes used to issue state certification to individuals already licensed in other states and countries. In addition, subsection (b) would be rearranged to alphabetize the definitions.

Proposed new subsection (c)(1)(C) would add a reference to the required years of experience as an educator to qualify for an exception to examination requirements. Standard certificate applicants would be required to have at least one year of experience in the role of classroom teacher, and professional class certificate applicants would be required to have at least two years of experience in the role of other than classroom teacher. These requirements are currently in subsection (d), which is proposed for deletion. This proposed amendment would streamline and consolidate without creating any new requirements.

Proposed new subsection (c)(1)(D) would renumber subsection (c)(1)(C) and reference how an applicant must demonstrate proficiency as an educator. The first option, which already exists in rule, is to demonstrate that the applicant has passed the examinations required by the licensing agency for issuance of his or her standard certificate. A new option would be added to allow an applicant to demonstrate that he or she has three or more years of verifiable, full-time experience in the role of teacher or other than classroom teacher. This amendment would allow educators who already have extensive experience teaching in other states to avoid the hassle and time required to prove their scores on other states' certification examinations. Other states that allow exceptions for teacher certification examinations, such as Arkansas, Colorado, Hawaii, Maryland, New York, Ohio, and Virginia, require educators to have three years of teaching experience to qualify for the exception. The proposed amendment would adopt the same standard that has worked in these other states.

The proposed amendment to subsection (c)(2)(B) would add Colorado, Michigan, Pennsylvania, and Washington to the list of states that would qualify an individual for an exception to the required Science of Teaching Reading TExES examination and would renumber the alphabetical listing of the states. Since this rule was last amended, these states have adopted a requirement that educator candidates demonstrate proficiency in reading as part of licensure.

The proposed amendment to subsection (c)(3) would provide technical edits to clarify the requirements an applicant from outside the state must meet prior to being considered for an exception to Texas examination requirements. The proposed amendment would also confirm that TEA staff will verify documents and grant exceptions to examination requirements in accordance with requirements established in this rule. All information specific to SBEC's governing processes to complete a Texas review of credentials for applicants licensed in other states or countries would be removed because it is duplicative of the requirements codified by the SBEC in 19 TAC Chapter 230, Professional Educator Preparation and Certification, and Chapter 245, Certification of Educators from Other Countries.

The proposed amendment would remove subsection (d) because the requirements for approval of an exception to examination requirements, including required years of experience, demonstration of proficiency, and issuance of a standard certificate by a licensing agency outside of Texas, would be incorporated into subsection (c).

FISCAL IMPACT: Emily Garcia, associate commissioner of educator preparation, certification, and enforcement, 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 both expand and limit an existing regulation. The proposed amendment would add definitions, provide another option for applicants to demonstrate proficiency as an educator, and allow applicants with certification from three additional states to be considered for an exception to the Sci-

ence of Teaching Reading TExES examination. The proposed amendment would remove information duplicative of SBEC rules in 19 TAC Chapter 230 and Chapter 245.

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 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. Garcia 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 to provide for more timely completion of the test exemption review process for and issuance of Texas standard certificates to individuals certified outside the state. 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 September 23, 2022, and ends October 24, 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 September 23, 2022. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.052(a-1), as amended by HB 139, 87th Texas Legislature, Regular Session, 2021, which permits the commissioner to adopt rules establishing exceptions to the examination requirements prescribed by TEC, §21.052(a)(3), for an educator from outside the state, including military service members, military spouses, and military veterans, to obtain a certificate in Texas.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §21.052(a-1).

§152.1001. Exceptions to Examination Requirements for Individuals Certified Outside the State.

(a) General provisions. Texas Education Code (TEC), §21.052(a-1), permits the commissioner of education to adopt rules establishing exceptions to the examination requirements prescribed by TEC, §21.052(a)(3), for an educator from outside the state, including military service members, military spouses, and military veterans, to obtain a certificate in Texas.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Certification class--A certificate, as described in §230.33 of this title (relating to Classes of Certificates), that has defined characteristics and includes the following: superintendent, principal, classroom teacher, school counselor, school librarian, educational diagnostician, reading specialist, and master teacher.

(2) Educator--An individual who is required to hold a certificate issued under TEC, Chapter 21, Subchapter B.

(3) Educator from outside the state--An applicant certified outside of Texas who has successfully completed all requirements for issuance of licensure in another state or country.

(4) Equivalent--Covering a majority of the same grade level and subject or assignment area as certificates issued by the State Board for Educator Certification.

~~[(1) Standard certificate--A type of certificate issued to an individual who has met all requirements for a given class of certification, as specified in §230.33 of this title (relating to Classes of Certificates).]~~

~~[(2) Professional class certificate--A term that refers to certificates for duties other than classroom teacher (e.g., superintendent, principal, school counselor, school librarian, educational diagnostician, and reading specialist).]~~

~~[(3) Texas review of credentials--An internal process completed by Texas Education Agency (TEA) to determine the certificate areas an applicant is eligible to pursue in Texas based on certificates issued by another state department of education or another country. An applicant must submit an online application for a review of credentials, application fee, and required documents specified in the application and on the TEA website, based on certificates issued in another state or country.]~~

(5) [~~(4)~~] Examination--A standardized test or assessment required by statute or State Board for Educator Certification rule that governs an individual's certification as an educator.

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

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

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

(9) Professional class certificate--A term that refers to certificates for duties other than classroom teacher (e.g., superintendent, principal, school counselor, school librarian, educational diagnostician, and reading specialist).

(10) Standard certificate--A type of certificate issued to an individual who has met all requirements for a given class of certification as a classroom teacher.

(11) Texas review of credentials--An internal process completed by Texas Education Agency (TEA) to confirm an applicant certified outside of Texas meets general requirements for certification specified in Chapter 230, Subchapter H, of this title (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States) and Chapter 245 of this title (relating to Certification of Educators from Other Countries) and to identify the certificate areas the applicant is eligible to pursue in Texas.

~~[(5) Equivalent--Covering a majority of the same grade level and subject or assignment area as certificates issued by the State Board for Educator Certification.]~~

(c) Minimum requirements.

(1) An applicant must meet the following general requirements for certification to be considered for an exception to the examinations, other than the Science of Teaching Reading TExES examination, required for issuance of state licensure:

(A) obtain a bachelor's degree from an institution of higher education that, at the time it conferred the degree, was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board;

(B) complete a state-approved educator preparation program, including student teaching or a teaching practicum, in the state where the standard certificate was issued;

(C) have the following required years of experience as an educator:

(i) for standard certificate applicants, at least one year of experience in the certification class for which the applicant is seeking certification; or

(ii) for professional class certificate applicants, at least two years of experience in the certification class for which the applicant is seeking certification;

(D) [~~(C)~~] demonstrate proficiency as an educator by either:

(i) passing [~~pass~~] the examinations required by the state department of education or country of licensure for issuance of the standard certificate; or [~~and~~]

(ii) having three or more years of verifiable, full-time experience in the certificate class for which the applicant is applying; and

(E) [~~(D)~~] hold a standard certificate issued by the state department of education or country of licensure that is equivalent to a Texas standard classroom or professional class certificate.

(2) In addition to the requirements of paragraph (1) of this subsection, to be considered for an exception to the required Science of Teaching Reading TExES examination, an applicant must fulfill the following requirements:

(A) hold a certificate that is equivalent to a Texas certificate for which the Science of Teaching Reading TExES examination is required as a content pedagogy examination under §230.21 of this title (relating to Educator Assessment); and

(B) submit documentation from a test provider or the state department of education of passing performance on a stand-alone assessment that requires demonstration of proficiency in the five components of scientifically based reading instruction (phonemic awareness, phonics, fluency, vocabulary, and comprehension) that was taken to meet licensure requirements in one of the following states:

(i) Alabama;

(ii) Alaska;

(iii) Arkansas;

(iv) California;

(v) Colorado;

(vi) [~~(v)~~] Connecticut;

(vii) [~~(vi)~~] Florida;

(viii) [~~(vii)~~] Indiana;

(ix) [~~(viii)~~] Maryland;

(x) [~~(ix)~~] Massachusetts;

(xi) Michigan;

(xii) [~~(x)~~] Minnesota;

(xiii) [~~(xi)~~] Mississippi;

(xiv) [~~(xii)~~] New Hampshire;

(xv) [~~(xiii)~~] New Mexico;

(xvi) [~~(xiv)~~] North Carolina;

(xvii) [~~(xv)~~] Ohio;

(xviii) [~~(xvi)~~] Oklahoma;

(xix) Pennsylvania;

(xx) [~~(xvii)~~] Tennessee;

(xxi) [~~(xviii)~~] Virginia;

(xxii) Washington;

(xxiii) [~~(xix)~~] West Virginia; or

(xxiv) [~~(xx)~~] Wisconsin.

(3) An applicant from outside the state who meets requirements specified in paragraph (1) of this subsection must apply online for a review of credentials by the TEA [~~and submit the following documents~~] prior to being considered for an exception to the examination requirements for state licensure. Once all required documentation has been submitted by the applicant and reviewed and verified by TEA staff, the applicant will be issued an exception to the examination requirements by the TEA in accordance with minimum requirements established by the commissioner as specified in this section.

[~~(A) For a candidate certified in another state, the applicant must submit the following:~~]

[~~(i)~~ ~~official transcript(s) showing degree(s) conferred and date(s);~~]

[~~(ii)~~ ~~documentation from a test provider or the state department of education of passing performance on required examinations passed for issuance of the state certificate; and~~]

[~~(iii)~~ ~~copy of standard certificate(s) issued by the state department(s) of education that clearly indicates the subject area(s) and grade levels of certification.~~]

[~~(B) For a candidate licensed to teach in another country, the applicant must submit the following, and all documentation must be written in the English language or must be accompanied by a translation in the English language from a foreign credential evaluation service recognized by the TEA or an accredited translation service:~~]

[~~(i)~~ ~~original detailed report or course-by-course evaluation for professional licensing of all college-level credits prepared by a foreign credential evaluation service recognized by the TEA. The evaluation must verify that the individual:~~]

[~~(I)~~ ~~holds, at a minimum, the equivalent of a baccalaureate degree issued by an accredited institution in the United States as specified in §245.1(b) of this title (relating to General Provisions), including the date that the degree was conferred; and~~]

[~~(II)~~ ~~has completed an educator preparation program, including a teaching practicum;~~]

[~~(ii)~~ ~~demonstration of English language proficiency as specified in §230.11(b)(5) of this title (relating to General Requirements);~~]

[(iii) ~~letter of professional standing from the country that issued licensure to teach that confirms the educator certificate(s) or other credential(s) are currently in good standing and have not been revoked, suspended, or sanctioned for misconduct and are not pending disciplinary or adverse action;~~]

[(iv) ~~official transcripts of any additional college credits and/or degrees earned in the United States;~~]

[(v) ~~copies of any standard certificates issued by the country of licensure or another state department of education; and~~]

[(vi) ~~documentation from a test provider or the state department of education of passing performance on required examinations passed for issuance of the standard certificate in the country of licensure or another state.~~]

~~[(d) Approval process.]~~

~~[(1) TEA will review and verify all required documentation submitted as part of the Texas review of credentials. An individual who does not submit all required documents for the review at the time of the application will have one year from the original date of application to submit all required documents, or the individual will be required to reapply online and resubmit the application fee for a Texas review of credentials.]~~

~~[(2) An applicant certified as a classroom teacher must have completed at least one academic year of verifiable, full-time experience serving in the role and must submit that documentation of experience to TEA.]~~

~~[(3) An applicant certified in a professional class other than classroom teacher (e.g., principal, superintendent, school counselor, school librarian, educational diagnostician, and reading specialist) is required to provide documents that verify two years of full-time experience in the role aligned with the professional class certificate area.]~~

~~[(4) Once all required documentation has been submitted by the educator and reviewed and verified by TEA staff to meet the Texas certification criteria, the applicant will be issued an exception from examination requirements by TEA in accordance with minimum requirements established by the commissioner as specified in this section.]~~

~~[(5) TEA will notify an applicant of the Texas certificate areas for which the applicant qualifies and examination requirements from which the applicant has been granted an exception (if applicable) and will specify final actions the applicant must complete to obtain licensures in this state.]~~

~~[(6) If the required documentation does not meet the Texas certification requirements, the applicant will be denied exception from the examination requirements and will be required to successfully complete the applicable examination(s) for issuance of the Texas standard certificate(s).]~~

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 September 12, 2022.

TRD-202203654

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: October 23, 2022
For further information, please call: (512) 475-1497

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

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

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§744.121, 744.123, 744.201, 744.305, 744.307, 744.401, 744.405, 744.501, 744.605, 744.701, 744.901, 744.1015, 744.1035, 744.1203, 744.1301, 744.1309, 744.1311, 744.1321, 744.1401, 744.2001, 744.2105, 744.2209, 744.2401, 744.2571, 744.2753, 744.2911, 744.3301, and 744.3807; new §§744.1205, 744.1403, 744.1405, and 744.2009; and the repeal of §744.1205 in Title 26, Texas Administrative Code, Chapter 744, Minimum Standards for School-Age and Before or After-School Programs.

BACKGROUND AND PURPOSE

This proposal is necessary to comply with Texas Human Resources Code (HRC) §42.042(b), which requires HHSC Child Care Regulation (CCR) to conduct a comprehensive review of minimum standards at least once every six years.

The purpose of the comprehensive review is to (1) identify minimum standards that need clarification and amend them; (2) identify minimum standards that may not have the intended outcome and amend or repeal them; (3) ensure that minimum standards are consistent with current research, best practices, and other guidelines; and (4) ensure regulatory requirements support the availability and affordability of child day care without compromising children's overall health and safety.

The proposed changes are the result of recommendations based on input from CCR staff and stakeholders, including child-care providers, caregivers, advocates, parents, and the public, compiled during the comprehensive review of all minimum standards located in Chapter 744.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §744.121 corrects the title of the department and the agency that regulate school-age and before or after-school programs.

The proposed amendment to §744.123 (1) adds definitions for "activity plan," "contract service provider," "hazardous materials," and "weather permitting"; (2) updates the definition for "age-appropriate" to include the child's assigned classroom and the developmental age of the child; (3) updates the definition of "caregiver" to include a reference to the newly defined term "contract service provider"; (4) updates the definition of "certified lifeguard" to require the training certificate be current and relevant to the type of water activity in which children will engage; (5) updates the definition of "corporal punishment" to include hitting a child with a hand or instrument, pinching, shaking,

and biting a child; (6) updates the definition of "sanitize" to (A) add information about disinfecting products, (B) remove the allowance for EPA-registered sanitizing products or disinfecting solutions that do not include labelling instructions for sanitizing (except for bleach), (C) clarify that soaking in or spraying on a bleach solution is a separate step from rinsing items children are likely to mouth, and (D) renumber the steps for sanitizing with bleach accordingly; (7) updates the definition of "special care needs" to include comprehension, emotional regulation, and a limitation due to an injury, illness, or allergy; (8) changes the term "state or local fire marshal" to "state or local fire authority" and updates the definition to be consistent with rules in other CCR chapters; and (9) updates the numbering of the definitions accordingly.

The proposed amendment to §744.201 (1) updates employee and volunteer requirements for reporting suspected abuse, neglect, or exploitation, to clarify (A) an employee may not delegate the responsibility to make a report; and (B) an operation may not require an employee to seek approval to file a report or notify the operation that a report was made; and (2) adds language to clarify that ensuring the confidentiality of background check information includes not disclosing background check information to unauthorized persons.

The proposed amendment to §744.305 (1) updates an agency title; and (2) adds language to clarify that an operation must report to CCR the occurrence of a non-routine situation that places or may place a child at risk for injury or harm.

The proposed amendment to §744.307 adds language to clarify that an operation must report to the child's parents when the child has been involved in a non-routine situation that places or may place a child at risk for injury or harm.

The proposed amendment to §744.401 updates the title of a rule reference.

The proposed amendment to §744.405 (1) updates the rule to include the telephone number for poison control; and (2) replaces the requirement that dialing 911 directs emergency personnel to the operation address with a requirement that all employees and caregivers know the address of the operation to direct emergency personnel to the operation when dialing 911 from the operation.

The proposed amendment to §744.501 adds a requirement that the operational policies for supporting inclusive services to children with special care needs must include the requirements in proposed new §744.2009.

The proposed amendment to §744.605 (1) updates the special care needs statement, included with a child's admission information, to require the inclusion of any limitations or restrictions on the child's activities and special care the child requires, including (A) any reasonable accommodations or modifications, (B) any adaptive equipment provided for the child, and (C) symptoms or indications of potential complications related to a physical, cognitive, or mental condition that may warrant prevention or intervention while the child is in care; (2) deletes the previous special care needs statement requirements regarding the inclusion of existing illness, previous serious illness and injuries, and hospitalizations during the past twelve months; and (3) moves the requirement to include allergies as part of the special care needs statement to the section of the rule that requires the operation to obtain a completed food allergy emergency plan.

The proposed amendment to §744.701 adds language to clarify that an operation must keep a written record of any non-routine situation that placed or may have placed a child at risk for injury or harm on the Licensing *Incident/Illness Report* Form 7239 or on another form with the same information.

The proposed amendment to §744.901 adds a requirement that the operation maintain documentation verifying that employees have met training requirements.

The proposed amendment to §744.1015 (1) updates a reference; and (2) updates and reorganizes language and punctuation for better readability and understanding.

The proposed amendment to §744.1035 updates the title of a rule reference.

The proposed amendment to §744.1203 (1) deletes requirements for caregivers to know which children they are responsible for and know each child's name and have information showing each child's age, as those requirements are now included in proposed new §744.1205; (2) updates a reference; (3) updates a reference to a rule title; (4) deletes the requirement for caregivers to ensure children are not out of control and replaces it with a requirement that caregivers set appropriate behavior expectations based on the child's current stage of development; (5) adds a requirement that caregivers provide care that is consistent with a child's habits, interests, strengths, and any special needs; and (6) updates the numbering of paragraphs accordingly.

Proposed new §744.1205 outlines the responsibilities a caregiver has when supervising children. The proposed rule (1) incorporates two requirements deleted from proposed amended §744.1203; (2) incorporates requirements from proposed repealed §744.1205; (3) adds a requirement that caregivers know how many children they are responsible for; (4) adds requirements for caregivers to take into consideration when supervising a child (A) the child's current stage of development, and (B) the child's physical, mental, emotional, and social needs; and (5) updates the requirement in proposed repealed §744.1205 that a caregiver supervising a child take into consideration the neighborhood circumstances, hazards, and risks to require the caregiver to take into consideration the circumstances, hazards, and risks surrounding the child.

The proposed repeal of §744.1205 deletes the rule as no longer necessary because the content of the rule has been updated and re-proposed in new §744.1205.

The proposed amendment to §744.1301 (1) updates the rule title, language, and syntax for better readability and understanding; and (2) adds new subsection (b) to clarify that at least one caregiver or employee with a current certification in pediatric CPR must be on the premises with a caregiver or employee without current pediatric CPR certification.

The proposed amendment to §744.1309 converts from a percentage to a whole number the amount of annual training hours for a caregiver or site director that may be self-instructional.

The proposed amendment to §744.1311 converts from a percentage to a whole number the amount of annual training hours for an operation director or program director that may be self-instructional.

The proposed amendment to §744.1321 (1) updates language for better readability and understanding; and (2) adds new sub-

section (b) to require that any block certification training allocate clock hours to each specific training topic.

The proposed amendment to §744.1401 (1) replaces the phrase "persons under contract with my operation" with the word "contractor" in the title of the rule; (2) deletes clarifications regarding contractors as these specifications are now included in the definition of "contractor" in proposed amended §744.123; (3) adds a requirement that substitutes, volunteers, and contractors comply with existing training requirements now delineated in proposed new §744.1403; (4) deletes the requirement that all substitutes, volunteers, and contractors complete orientation because the requirement has been incorporated into proposed new §744.1403; and (5) updates the numbering of subsections accordingly.

Proposed new §744.1403 outlines the training requirements for substitutes, volunteers, and contractors. The proposed new rule (1) incorporates requirements in proposed amended §744.1401 that require substitutes, volunteers, and contractors to comply with minimum standards that apply to employees or caregivers, depending on their role at the operation, but focuses solely on minimum standards related to training; and (2) includes a requirement that least one caregiver or employee with a current certification in pediatric CPR be on the premises with a substitute, volunteer, or contractor without current pediatric CPR certification if the substitute, volunteer, or contractor is counted in the child to caregiver ratio.

Proposed new §744.1405 outlines the circumstances that exempt a substitute, volunteer, or contractor from pre-service training. These circumstances include if a substitute, volunteer, or contractor (A) has at least six months of documented prior experience in a regulated operation, or (B) can provide documentation of at least eight clock hours of training in areas specified in §744.1305.

The proposed amendment to §744.2001 (1) deletes subsection (b) as no longer necessary because the content has been updated and re-proposed in proposed new §744.2009; and (2) removes the subsection numbers, since they are no longer necessary.

Proposed new §744.2009 outlines the child-care operation's responsibilities when planning activities for a child in care with special care needs. The proposed new rule (1) incorporates requirements from deleted subsection (b) of proposed amended §744.2001, with the exception of the requirement to maintain documentation of basic care requirements on file at the operation, because that component is required elsewhere in Chapter 744; (2) clarifies that the child-care operation must provide a child with special care needs the accommodations recommended by a qualified professional; (3) adds a requirement that a child-care operation utilize as recommended any adaptive equipment that has been provided for a child's use; (4) adds a requirement that an operation ensure that a child who receives specialized services for the child's disability can receive those services from a qualified service provider at the operation, with parental request and approval; and (5) adds a requirement that caregivers adapt procedures as necessary to care for a child with special needs in a natural environment.

The proposed amendment to §744.2105 (1) expands the list of prohibited discipline and guidance measures to include grabbing or pulling on a child; (2) deletes from the list pinching, shaking, or biting a child and hitting a child with a hand or instrument because those requirements have been incorporated into the definition of corporal punishment in the proposed amendment to §744.123; and (3) updates the numbering of the paragraphs accordingly.

The proposed amendment to §744.2209 updates a reference.

The proposed amendment to §744.2401 (1) updates punctuation; (2) adds language to clarify that an operation must serve enough food to allow a child to have a second serving from the vegetable, fruit, grain, and milk groups if the child requests it; (3) adds a requirement that the supply of drinking water be clean and sanitary and available during active play and reorganizes the subsection into two paragraphs for better readability and understanding; and (4) clarifies that the operation may not serve beverages with added sugars unless otherwise allowed by the Child and Adult Care Food Program.

The proposed amendment to §744.2571 (1) adds an allowance for an operation to use an infrared temporal (forehead) thermometer to assess a child's temperature and provides guidelines for a temperature reading indicative of illness; and (2) updates the numbering of the subparagraphs accordingly.

The proposed amendment to §744.2753 (1) deletes the requirement for cotton balls in a first-aid kit; (2) amends the requirement for adhesive bandages in a first-aid kit so that they do not have to be multi-sized; and (3) updates the numbering of the paragraphs in the relevant subsection accordingly.

The proposed amendment to §744.2911 (1) adds a requirement that an operation must follow any restrictions issued by the state or local fire authority when seeking approval to care for children above or below ground level; and (2) reorganizes the rule into paragraphs.

The proposed amendment to §744.3301 updates a reference.

The proposed amendment to §744.3807 (1) reorganizes the rule for better readability and understanding; (2) adds a requirement that an operation may only use child safety seats and child booster seats that have not expired or been damaged or involved in an accident; (3) updates the numbering of the subsections accordingly; and (4) updates the safety restraint device requirements to be consistent with current recommendations from the Texas Department of Transportation and the American Academy of Pediatrics.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

(5) the proposed rules will create new rules;

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

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

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

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

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

Chapter 2006 of Texas Government Code defines a small business as one that is for-profit with fewer than 100 employees. A micro-business is one that is for-profit with fewer than 20 employees. Based on data obtained in March 2022, CCR estimates that there are approximately 1,466 School-Age Programs and Before and After-School Programs required to comply with the rules. CCR conducted a survey of licensed child-care operations in 2019 to determine which operations met the definition of a small or micro-business and only received a response rate of approximately 1.5 percent of School-Age Programs and 1.1 percent of Before and After-School Programs, which is not statistically significant. However, data in March 2022 indicated that approximately 38.7 percent (or 567 programs) were for profit. In addition, based on a survey conducted in 2010, approximately 98 percent of those programs (or 556 programs) have less than 100 employees and qualify as small businesses and approximately 68 percent of those small businesses (or 378 programs) have less than 20 employees and qualify as micro-businesses.

There is a projected economic impact on small businesses and micro-businesses from proposed §744.501 and §744.3807. CCR staff developed the methodologies used to calculate the fiscal impact of these rules. The impact was calculated using cost research conducted by staff and assumptions regarding child-care practices. The key assumptions and methodologies are described in detail below, as these underlie the individual impact calculations that are projected to have a fiscal impact on at least some School-Age Programs and Before and After-School Programs.

Section 744.501 requires an operation to develop in its operational policies written procedures for supporting inclusive services to children with special care needs. Historically, operations have indicated a labor cost to update operational policies to bring them into compliance with proposed rule changes. HHSC does not have sufficient information to determine these costs as developing the procedures and policy will vary greatly with individual business structure.

Section 744.3807 requires an operation to use only child safety seats and child booster seats that have not expired or been damaged or involved in an accident. While this requirement was previously a best practice suggestion and may be common practice among child-care operations currently, the proposed rule may require some operations to purchase new child safety seats and child booster seats to comply with the proposed rule. In April 2021, Consumer Reports indicated the average child safety seat cost ranges from $40 to $450, depending on the model of the child safety seat. In the same assessment, Consumer Reports indicated child booster seat cost ranges from $11 to $320. Although HHSC can use this information to ascertain a general cost range to replace child safety seats and child booster seats, HHSC is unable to determine which operations will need to replace child safety seats or child booster seats, the model or type of safety seat an operation will purchase, or the number of seats an operation may need to purchase. HHSC is also unable to determine how many operations to exclude from the economic impact because they use seats provided by children's parents. As a result, HHSC does not have sufficient information to determine economic costs for persons required to comply with the rule as proposed.

HHSC determined that alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of children attending child-care operations in Texas.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be regulatory requirements that reflect current research, best practices and guidelines around child safety and well-being, rules that clarify provider requirements, and rules that comply with state law.

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Aimee Belden by email at Aimee.Belden@hhs.texas.gov.

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 21R157" in the subject line.

SUBCHAPTER A. PURPOSE, SCOPE, AND DEFINITIONS

DIVISION 3. DEFINITIONS

26 TAC §744.121, §744.123

STATUTORY AUTHORITY

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

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

§744.121. What do certain pronouns mean when used in this chapter?

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

(1) I, my, you, and your--An applicant or permit holder, unless otherwise stated.

(2) We, us, our, and Licensing--The Child Care Regulation department of the Texas Health and Human Services Commission (HHSC) [~~The Licensing Division of the Texas Department of Family and Protective Services (DFPS)~~].

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

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

(1) Activity plan--A written plan that outlines the daily routine and activities in which a child will engage while in your care. The plan is designed to meet the child's cognitive, language, social, emotional, and physical developmental strengths and needs.

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

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

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

(5) [~~(4)~~] Adult--A person 18 years old and older.

(6) [~~(5)~~] Age-appropriate--Activities, equipment, materials, curriculum, and environment, including the child's assigned classroom, that are developmentally consistent with the developmental or chronological age of the child being served.

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

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

(9) [~~(8)~~] Caregiver--A person who is counted in the child to caregiver ratio, whose duties include the supervision, guidance, and protection of a child. As used in this chapter, a caregiver must meet the minimum education, work experience, and training qualifications required under Subchapter D of this chapter (relating to Personnel). A caregiver is usually an employee, but may also be a substitute, volunteer, or contractor, as outlined in paragraph (15) of this section and Subchapter D, Division 5 of this chapter (relating to Substitutes, Volunteers, and Contractors).

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

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

(12) [~~(11)~~] CEUs--Continuing education units. A standard unit of measure for adult education and training activities. One CEU equals 10 clock hours of participation in an organized, continuing-education experience, under responsible, qualified direction and instruction. Although a person may obtain a CEU in many of the same settings as clock hours, the CEU provider must meet the criteria established by the International Association for Continuing Education and Training to be able to offer the CEU.

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

(14) [~~(13)~~] Clock hour--An actual hour of documented:

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

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

(15) Contract service provider--A person or entity contracting with the operation to provide a service, whether paid or unpaid. Also referred to as "contract staff" and "contractor" in this chapter.

(16) [~~(14)~~] Corporal punishment--The infliction of physical pain on a child as a means of controlling behavior. This includes spanking, hitting with a hand or instrument, slapping, pinching, shaking, biting, or thumping a child.

(17) [~~(15)~~] Days--Calendar days, unless otherwise stated.

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

(19) [~~(17)~~] Employee--A person an operation employs full-time or part-time to work for wages, salary, or other compensation.

Employees are all of the operation staff, including caregivers, kitchen staff, office staff, maintenance staff, the assistant director, all directors, and the owner, if the owner is ever on site at the operation or transports a child.

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

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

(22) [~~(20)~~] Field trips--Activities conducted away from the operation.

(23) [~~(21)~~] Food service--The preparation or serving of meals or snacks.

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

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

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

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

(28) Hazardous materials--Any substance or chemical that is a health hazard or physical hazard as determined by the Environmental Protection Agency. Also referred to as "toxic materials" and "toxic chemicals" in this chapter.

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

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

(31) [~~(28)~~] High school equivalent--

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

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

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

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

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

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

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

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

(38) [~~(35)~~] Natural environment--Settings that are natural or typical for all children of the same age without regard to ability or disability. For example, a natural environment for learning social skills is a play group of peers.

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

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

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

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

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

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

(A) Operation voluntarily closes;

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

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

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

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

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

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

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

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

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

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

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

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

(A) Washing with water and soap;

(B) Rinsing with clear water;

(C) Soaking in or spraying on a bleach [~~disinfecting~~] solution for at least two minutes;[~~.~~]

(D) Rinsing with cool water only those items that children are likely to place in their mouths; and

(E) [~~(D)~~] Allowing the surface or item to air-dry.

(54) [~~(51)~~] School-age child--A child who is five years of age and older and is enrolled in or has completed kindergarten.

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

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

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

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

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

(60) [~~(57)~~] Special care needs--A child with special care needs is a child who has:

(A) A [~~a~~] chronic physical, developmental, behavioral, or emotional condition and who also requires assistance beyond that required by a child generally to perform tasks that are within the typical chronological range of development, including the movement of large or small muscles, learning, talking, communicating, comprehension, emotional regulation, self-help, social skills, emotional well-being, seeing, hearing, and breathing; or[~~.~~]

(B) A limitation due to an injury, illness, or allergy.

(61) [~~(58)~~] State or local fire authority [~~marshal~~]--A fire official who is authorized to conduct fire safety inspections on behalf of [~~designated by~~] the city, county, or state government, including certified fire inspectors. Also referred to as "fire marshal" in this chapter.

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

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

(64) Weather permitting--Weather conditions that do not pose any concerns for health and safety, such as significant risk of frostbite or heat-related illness. This includes adverse weather conditions in which children may still play safely outdoors for shorter periods with appropriate adjustments to clothing and any necessary access to water, shade, or shelter.

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 September 7, 2022.

TRD-202203516
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: October 23, 2022
For further information, please call: (512) 438-3269

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SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION
DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

26 TAC §744.201

STATUTORY AUTHORITY

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

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

§744.201. What are my responsibilities as the permit holder?

You are responsible for:

(1) Developing and implementing your operational policies, which must comply with or exceed the minimum standards specified in this subchapter;

(2) Developing written personnel policies, including job descriptions, job responsibilities, and requirements;

(3) Making provisions for training that comply with Division 4, Subchapter D of this chapter (relating to Professional Development);

(4) Designating an operation director, program director, or site director, as applicable, who meets minimum standard qualifications as specified in Subchapter D of this chapter;

(5) Reporting and ensuring your employees and volunteers report suspected abuse, neglect, or exploitation directly to the Texas Abuse and Neglect Hotline [~~Texas Department of Family and Protective Services and may not delegate this responsibility~~], as required by Texas Family Code §261.101; an employee may not delegate the responsibility to make a report, and you may not require an employee to seek approval to file a report or notify you that a report was made;

(6) Ensuring all information related to background checks is kept confidential and not disclosed to unauthorized persons, as required by the Human Resources Code §40.005(d) and (e);

(7) Ensuring parents can visit the operation any time during your hours of operation to observe their child, program activities, the building, the premises, and the equipment without having to secure prior approval;

(8) Complying with the liability insurance requirements in this division;

(9) Complying with the child-care licensing law found in Chapter 42 of the Human Resources Code, the applicable minimum standards, and other applicable rules in the Texas Administrative Code;

(10) Reporting to Licensing any Department of Justice substantiated complaints related to Title III of the Americans with Disabilities Act, which applies to commercial public accommodations; and

(11) Ensuring the total number of children in care at the operation or away from the operation, such as during a field trip, never exceeds the licensed capacity of the operation.

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 September 7, 2022.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 438-3269

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DIVISION 2. REQUIRED NOTIFICATIONS

26 TAC §744.305, §744.307

STATUTORY AUTHORITY

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

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

§744.305. What other situations require notification to Licensing?

(a) You must notify us as soon as possible, but no later than two days after:

(1) Any occurrence that renders all or part of your operation unsafe or unsanitary for a child;

(2) Injury to a child in your care that requires medical treatment by a health-care professional or hospitalization;

(3) A child in your care shows signs or symptoms of an illness that requires hospitalization;

(4) You become aware that an employee or child in your care contracts an illness deemed notifiable by the Texas Department of State Health Services, as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases);

(5) A person for whom you are required to request a background check, under Chapter 745, Subchapter F of this title (relating to Background Checks), is arrested or charged with a crime;

(6) The occurrence of any other non-routine situation that places, or may place, a child at risk for injury or harm, such as forgetting a child in an operation vehicle or on the playground or not preventing a child from wandering away from the operation unsupervised; and

(7) A new individual becomes a controlling person at your operation, or an individual that was previously a controlling person ceases to be a controlling person at your operation.

(b) You must notify us immediately if a child dies while in your care.

§744.307. What emergency or medical situations must I notify parents about?

(a) You must notify the parent of a child immediately if there is an allegation that the child has been abused, neglected, or exploited, as defined in Texas Family Code §261.001, while in your care.

(b) After you ensure the safety of the child, you must notify the parent of the child immediately after the child:

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

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

(3) Has had an emergency anaphylaxis reaction that required administration of an unassigned epinephrine auto-injector;

(4) Has been involved in any non-routine situation that placed, or may have placed, the child at risk for injury or harm. For example, a caregiver forgetting the child in an operation vehicle or on the playground or failing to prevent the child from wandering away from the operation unsupervised; or

(5) Has been involved in any situation that renders the operation unsafe, such as a fire, flood, or damage to the operation as a result of severe weather.

(c) You must notify the parent of less serious injuries when the parent picks the child up from the operation. Less serious injuries include minor cuts, scratches, and contusions requiring first-aid treatment by employees.

(d) You must provide written notice to the parent of each child attending the operation within 48 hours of becoming aware that a child in your care or an employee has contracted a communicable disease deemed notifiable by the Department of State Health Services, as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases).

(e) You must provide written notice to the parent of each child in a group within 48 hours when there is an outbreak of lice or other infestation in the group. You must either post this notice in a prominent and publicly accessible place where parents can easily view it or send an individual note to each parent.

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 September 7, 2022.

TRD-202203518

Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: October 23, 2022
For further information, please call: (512) 438-3269

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DIVISION 3. REQUIRED POSTINGS

26 TAC §744.401, §744.405

STATUTORY AUTHORITY

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

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

§744.401. What items must I post at my operation at all times?

You must post the following items:

(1) Your license;

(2) The letter or form from the most recent Licensing inspection or investigation;

(3) The Licensing notice *Keeping Children Safe;*

(4) Your emergency evacuation and relocation diagram as specified in §744.3561 of this title (relating to Must I have an emergency evacuation and relocation diagram?);

(5) The activity plan for each group of children, if required by §744.2005 of this title (relating to What written activity plans must caregivers follow? [~~Must caregivers have written activity plans?~~]);

(6) The daily menu, if applicable, including all snacks and meals prepared or served by the operation;

(7) The Licensing *Parent Notification Poster;*

(8) Telephone numbers specified in §744.405 of this title (relating to What telephone numbers must I post and where must I post them?);

(9) A list of each child's food allergies that require an emergency plan, as specified in §744.2669 of this title (relating to When must I have a food allergy emergency plan for a child?); and

(10) Any other Licensing notices with specific instructions to post the notice.

§744.405. What telephone numbers must I post and where must I post them?

(a) You must post in a prominent place the following telephone numbers:

(1) 911 or, if 911 is not available in your area, you must post the telephone numbers for:

(A) Emergency medical services;

(B) Law enforcement; and

(C) Fire department;

(2) Poison control (1-800-222-1222);

(3) The Texas Abuse and Neglect Hotline (1-800-252-5400);

(4) The local Licensing office telephone number; and

(5) The operation's telephone number, name, and address.

(b) If you use cellular phone service at your operation, you must ensure all employees and caregivers know the address of the operation to direct [~~dialing 911 directs~~] emergency personnel to the [~~address or location of your~~] operation when dialing 911 from the operation.

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DIVISION 4. OPERATIONAL POLICIES

26 TAC §744.501

STATUTORY AUTHORITY

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

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

§744.501. What written operational policies must I have?

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

(1) Hours, days, and months of operation;

(2) Procedures for the release of children;

(3) Illness and exclusion criteria;

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

(5) Procedures for handling medical emergencies;

(6) Procedures for parental notifications;

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

(8) Suspension and expulsion of children;

(9) Meals and food service practices;

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

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

(12) Transportation, if applicable;

(13) Water activities, if applicable;

(14) Field trips, if applicable;

(15) Animals, if applicable;

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

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

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

(19) Procedures for parents to participate in the operation's activities;

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

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

(22) Emergency preparedness plan;

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

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

(25) If your operation maintains and administers unassigned epinephrine auto-injectors to use when a child in care has an emergency anaphylaxis reaction, policies for maintenance, administration, and disposal of unassigned epinephrine auto-injectors that comply with the unassigned epinephrine auto-injector requirements set by the Texas Department of State Health Services, as specified in 25 TAC Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities) and Texas Health and Safety Code §773.0145; and[.]

(26) Procedures for supporting inclusive services to children with special care needs. The policy must address the requirements outlined in §744.2009 of this chapter (relating to What are my responsibilities when planning activities for a child in care with special care needs?)

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

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SUBCHAPTER C. RECORD KEEPING
DIVISION 1. RECORDS OF CHILDREN

26 TAC §744.605

STATUTORY AUTHORITY

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

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

§744.605. What admission information must I obtain for each child?

You must obtain at least the following information before admitting a child to the operation:

(1) The child's name and birth date;

(2) The child's home address and telephone number;

(3) Date of the child's admission to the operation;

(4) Name and address of parent(s);

(5) Telephone numbers at which parent(s) can be reached while the child is in care;

(6) Name, address, and telephone number of another responsible individual (friend or relative) who should be contacted in an emergency when the parent cannot be reached;

(7) Names and telephone numbers of persons other than a parent to whom the child may be released;

(8) Permission for transportation, if provided, including any authorized pick-up and drop-off locations;

(9) Permission for field trips, if provided;

(10) Permission for participation in water activities, if provided;

(11) Name, address, and telephone number of the child's physician or an emergency-care facility;

(12) Authorization to obtain emergency medical care and to transport the child for emergency medical treatment;

(13) A statement of the child's special problems or special care needs, which must include:[. ~~This includes, but is not limited to, allergies, existing illness, previous serious illness and injuries, hospitalizations during the past 12 months, and any medications prescribed for continuous, long-term use;~~]

(A) Any limitations or restrictions on the child's activities;

(B) Special care the child requires, including:

(i) Any reasonable accommodations or modifications;

(ii) Any adaptive equipment provided for the child; and

(iii) Symptoms or indications of potential complications related to a physical, cognitive, or mental condition that may warrant prevention or intervention while the child is in care; and

(C) Any medications prescribed for continuous, long-term use.

(14) The name and telephone number of the school that a school-age child attends, unless the operation is located at the child's school;

(15) Permission for a school-age child to ride a bus, walk to or from school or home, or to be released to the care of a sibling under 18 years old, if applicable; and

(16) The child's allergies and a [~~A~~] completed food allergy emergency plan for the child, if applicable.

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DIVISION 2. RECORDS OF ACCIDENTS AND INCIDENTS

26 TAC §744.701

STATUTORY AUTHORITY

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

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

§744.701. What written records must I keep of accidents and incidents that occur at my operation?

You must record the following information on the Licensing *Incident/Illness Report* Form 7239 or another form that contains at least the same information:

(1) An injury to a child in care that required medical treatment by a health-care professional or hospitalization;

(2) An illness that required the hospitalization of a child in care;

(3) An incident where a child in care had an emergency anaphylaxis reaction that required administration of an unassigned epinephrine auto-injector;

(4) An incident of a child in care or employee contracting a communicable disease deemed notifiable by the Texas Department of State Health Services as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases); and

(5) Any other non-routine situation that placed, or may have placed, a child at risk for injury or harm, such as forgetting a child in an operation's vehicle or not preventing a child from wandering away from the operation unsupervised.

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DIVISION 4. PERSONNEL RECORDS

26 TAC §744.901

STATUTORY AUTHORITY

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

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

§744.901. What information must I maintain in my personnel records?

You must have the following records at the operation and available for review during your hours of operation for each employee, caregiver, substitute, and volunteer as specified in this chapter:

(1) Documentation showing the dates of the first and last day on the job;

(2) Documentation showing how the employee meets the minimum age and education qualifications, if applicable;

(3) A copy of a health card or health care professional's statement verifying the employee is free of active tuberculosis, if required by the regional Department of State Health Services TB program or local health authority;

(4) A notarized Licensing *Affidavit for Applicants for Employment* form as specified in Human Resources Code, §42.059;

(5) A record of training hours, including documentation required by §744.1331 of this chapter (relating to What documentation must I provide to Licensing to verify that employees have met training requirements?);

(6) A statement signed and dated by the employee showing he has received a copy of the operation's:

(A) Operational policies; and

(B) Personnel policies;

(7) Proof of request for background checks required under 40 TAC Chapter 745, Subchapter F (relating to Background Checks);

(8) A copy of a photo identification;

(9) A copy of a current driver's license for each person who transports a child in care; and

(10) A statement signed and dated by the employee verifying the date the employee attended training during orientation that includes an overview regarding the prevention, recognition, and reporting of child maltreatment, as outlined in §744.1303 of this chapter (relating to What must orientation for employees at my operation include?).

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SUBCHAPTER D. PERSONNEL
DIVISION 1. DIRECTOR

26 TAC §744.1015, §744.1035

STATUTORY AUTHORITY

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

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

§744.1015. What qualifications must an operation director or a program director meet?

Except as otherwise provided in this division, an operation director or program director must be at least 21 years of age, have a high school

diploma or its equivalent, and meet one of the following combinations of education and experience:
Figure: 26 TAC §744.1015
[~~Figure: 26 TAC §744.1015~~]

§744.1035. May clock hours or CEUs (continuing education units) be substituted for any of the educational requirements in this division?

(a) Clock hours or CEUs may only be substituted for the required credit hours in child development and management.

(b) 50 clock hours or five CEUs may only be substituted for every three college credit hours required in child development and/or management.

(c) The documentation to verify the clock hours or CEUs must be as specified in §744.1331 of this title (relating to What documentation must I provide to Licensing to verify that employees have met training requirements [~~have been met~~]?).

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DIVISION 3. GENERAL RESPONSIBILITIES FOR PERSONNEL

26 TAC §744.1203, §744.1205

STATUTORY AUTHORITY

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

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

§744.1203. What additional responsibilities do my caregivers have?

In addition to the responsibilities for employees specified in this division, caregivers must:

(1) Know and comply with the minimum standards in this chapter;

[~~(2) Know which children they are responsible for;~~]

[~~(3) Know each child's name and have information showing each child's age;~~]

(2) [~~(4)~~] Supervise children at all times, as specified in §744.1205 of this division [~~title~~] (relating to What responsibilities does a caregiver have when supervising a child or children? [~~What does Licensing mean by "supervise children at all times?"~~]);

[~~(5) Ensure the children are not out of control;~~]

(3) [~~(6)~~] Be free from activities not directly involving the teaching, care, and supervision of children, such as:

(A) Administrative and clerical duties that take the caregiver's attention away from the children;

(B) Meal preparation, except when 12 or fewer children are in care;

(C) Janitorial duties; and

(D) Personal use of electronic devices, such as cell phones, MP3 players, tablets, and video games;

(4) Provide care that is consistent with the child's habits, interests, strengths, and any special needs, including any special supervision needs or care, as outlined in §744.2009 of this chapter (relating to What are my responsibilities when planning activities for a child in care with special care needs?);

(5) [~~(7)~~] Interact with children in a positive manner;

(6) Set appropriate behavior expectations based on the child's current stage of development;

(7) [~~(8)~~] Foster developmentally appropriate independence in children through planned but flexible program activities;

(8) [~~(9)~~] Foster a cooperative rather than a competitive atmosphere;

(9) [~~(10)~~] Show appreciation of children's efforts and accomplishments; and

(10) [~~(11)~~] Ensure continuity of care for children by sharing with incoming caregivers information about each child's activities during the previous shift and any verbal or written instructions given by the parent.

§744.1205. What responsibilities does a caregiver have when supervising a child or children?

(a) The caregiver is responsible for:

(1) Knowing which children the caregiver is responsible for;

(2) Knowing how many children the caregiver is responsible for;

(3) Knowing each child's name and having information showing each child's age;

(4) Providing the level of supervision necessary to ensure each child's safety and well-being, including physical proximity and auditory or visual awareness of each child's ongoing activity as appropriate; and

(5) Being able to intervene when necessary to ensure each child's safety.

(b) In deciding how closely to supervise a child, the caregiver must take into account:

(1) The child's chronological age;

(2) The child's current stage of development;

(3) The child's individual differences and abilities;

(4) The indoor and outdoor layout of the operation;

(5) The circumstances, hazards, and risks surrounding the child; and

(6) The child's physical, mental, emotional, and social needs.

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26 TAC §744.1205

STATUTORY AUTHORITY

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

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

§744.1205. What does Licensing mean by "supervise children at all times"?

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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DIVISION 4. PROFESSIONAL DEVELOPMENT

26 TAC §§744.1301, 744.1309, 744.1311, 744.1321

STATUTORY AUTHORITY

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

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

§744.1301. What are the training requirements for employees, caregivers, and directors? [~~What training must I ensure that my employees, caregivers, and directors have within specific timeframes?~~]

(a) Employees [~~You must make sure that employees~~], caregivers, and directors must complete the following [~~have the~~] training requirements. [~~required in the following chart:~~]
Figure: 26 TAC §744.1301(a)
[~~Figure: 26 TAC §744.1301~~]

(b) If a caregiver or employee does not yet have a current certificate in pediatric CPR, as required in (a)(4)(A) in Figure: 26 TAC §744.1301(a), at least one caregiver or employee with a current certificate must also be on the premises with the caregiver.

§744.1309. What areas of training must the annual training for caregivers and site directors cover?

(a) The 15 clock hours of annual training must:

(1) For a caregiver, be relevant to the age of the children for whom the caregiver provides care; or

(2) For a site director, be relevant to the age of the children for whom the operation provides care.

(b) At least six clock hours of the annual training hours must be in one or more of the following topics:

(1) Child growth and development;

(2) Guidance and discipline;

(3) Age-appropriate curriculum; and

(4) Teacher-child interaction.

(c) At least one clock hour of the annual training hours must focus on prevention, recognition, and reporting of child maltreatment, including:

(1) Factors indicating a child is at risk for abuse or neglect;

(2) Warning signs indicating a child may be a victim of abuse or neglect;

(3) Procedures for reporting child abuse or neglect; and

(4) Community organizations that have training programs available to employees, children, and parents.

(d) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:

(1) Emergency preparedness;

(2) Preventing and controlling the spread of communicable diseases, including immunizations;

(3) Administering medication, if applicable, including compliance with §744.2653 of this chapter (relating to What authorization must I obtain before administering a medication to a child in my care?);

(4) Preventing and responding to emergencies due to food or an allergic reaction;

(5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; and

(6) Handling, storing, and disposing of hazardous materials including compliance with §744.2523 of this chapter (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?).

(e) The remaining annual training hours must be in one or more of the following topics:

(1) Care of children with special needs;

(2) Child health (for example, nutrition, and physical activity);

(3) Safety;

(4) Risk management;

(5) Identification and care of ill children;

(6) Cultural diversity for children and families;

(7) Professional development (for example, effective communication with families and time and stress management);

(8) Topics relevant to the particular age group the caregiver is assigned;

(9) Planning developmentally appropriate learning activities; and

(10) Minimum standards and how they apply to the caregiver.

(f) No more than 12 [~~80%~~] of the 15 required annual training hours may come from self-instructional training. No more than three of those self-instructional hours may come from self-study training.

(g) The 15 clock hours of annual training are exclusive of any requirements for orientation, pre-service training, pediatric first aid and pediatric CPR training, transportation safety training, and high school child-care work-study classes.

§744.1311. What areas of training must the annual training for an operation director or a program director cover?

(a) The 20 clock hours of annual training must be relevant to the age of the children for whom the operation provides care.

(b) At least six clock hours of the annual training hours must be in one or more of the following topics:

(1) Child growth and development;

(2) Guidance and discipline;

(3) Age-appropriate curriculum;

(4) Teacher-child interaction; and

(5) Serving children with special care needs.

(c) At least one clock hour of the annual training hours must focus on prevention, recognition, and reporting of child maltreatment, including:

(1) Factors indicating a child is at risk for abuse or neglect;

(2) Warning signs indicating a child may be a victim of abuse or neglect;

(3) Procedures for reporting child abuse or neglect; and

(4) Community organizations that have training programs available to employees, children, and parents.

(d) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:

(1) Emergency preparedness;

(2) Preventing and controlling the spread of communicable diseases, including immunizations;

(3) Administering medication, if applicable, including compliance with §744.2653 of this chapter (relating to What authorization must I obtain before administering a medication to a child in my care?);

(4) Preventing and responding to emergencies due to food or an allergic reaction;

(5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; and

(6) Handling, storing, and disposing of hazardous materials including compliance with §744.2523 of this chapter (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?).

(e) An operation director or program director with:

(1) Five or fewer years of experience as a designated operation director or program director must complete at least six clock hours of the annual training hours in management techniques, leadership, or staff supervision; or

(2) More than five years of experience as a designated operation director or program director must complete at least three clock hours of the annual training hours in management techniques, leadership, or staff supervision.

(f) The remainder of the 20 clock hours of annual training must be selected from the training topics specified in §744.1309(e) of this division (relating to What areas of training must the annual training for caregivers and site directors cover?).

(g) An operation director or program director may obtain clock hours or CEUs from the same sources as caregivers.

(h) A director may not earn training hours by presenting training to others.

(i) No more than 16 [~~80%~~] of the required 20 annual training hours may come from self-instructional training. No more than three of those self-instructional hours may come from self-study training.

(j) The 20 clock hours of annual training are exclusive of any requirements for orientation, pre-service training, pediatric first aid and pediatric CPR training, and transportation safety training.

§744.1321. Does Licensing approve training resources or trainers for training hours?

(a) [~~No.~~] We do not approve or endorse training resources or trainers for training hours. But you must ensure you and your employees receive training that:

(1) Meets the criteria specified in §744.1319 of this title (relating to Must the training for my caregivers and the director meet certain criteria?);

(2) Is relevant to the topics specified in this division; and

(3) Provides the [~~The~~] participants with [~~receive~~] original documentation of completion, as specified in this division.

(b) If the training is provided through a block certification training, the training must allocate clock hours to each specific topic included in the training.

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DIVISION 5. SUBSTITUTES, VOLUNTEERS, AND CONTRACTORS

26 TAC §§744.1401, 744.1403, 744.1405

STATUTORY AUTHORITY

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

The amendment and new sections affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§744.1401. What minimum standards must substitutes, volunteers, or contractors [~~persons under contract with my operation~~] comply with?

[~~(a) For purposes of this rule:~~]

[~~(1) Persons under contract with your operation are "contractors"; and~~]

[~~(2) It does not matter if a substitute, volunteer, or contractor is paid or unpaid.~~]

(a) [~~(b)~~] Substitutes not counted in the child/caregiver ratio must comply with minimum standards that apply to employees, except as otherwise provided in this division.

(b) [~~(c)~~] Volunteers and contractors who are regularly or frequently present at the operation but not counted in the child/caregiver ratio must comply with minimum standards that apply to employees.

(c) [~~(d)~~] Substitutes, volunteers, and contractors who are counted in the child/caregiver ratio must comply with minimum standards that apply to employees and caregivers, except as otherwise noted in subsection (d) [~~(c)~~] of this section.

(d) [~~(e)~~] Volunteers, including parents, who only supplement the ratios for field trips and water activities do not have to comply with the minimum standards that apply to employees and caregivers, but they do have to comply with the relevant minimum standards in Subchapter E of this chapter relating to (Child/Caregiver Ratios and Group Sizes).

(e) [~~(f)~~] Substitutes, volunteers, and contractors who do not meet caregiver qualifications must never be left alone with children.

(f) Substitutes, volunteers, and contractors must comply with the training requirements in §744.1403 of this division (relating to What are the training requirements for substitutes, volunteers, and contractors?).

[~~(g) All substitutes, volunteers (except for those volunteers noted in subsection (e) of this section), and contractors must complete orientation before beginning the relevant duties.~~]

§744.1403. What are the training requirements for substitutes, volunteers, and contractors?

(a) Substitutes, volunteers, and contractors must complete the following training requirements.
Figure: 26 TAC §744.1403(a)

(b) If a substitute, volunteer, or contractor who is counted in the child to caregiver ratio does not yet have a current certificate in pediatric CPR, as required in (a)(4)(A) in Figure: 26 TAC §744.1403(a), at least one caregiver or employee with a current certificate must also be on the premises with the substitute, volunteer, or contractor.

§744.1405. When is a substitute, volunteer, or contractor exempt from the pre-service training?

A substitute, volunteer, or contractor is exempt from the pre-service training requirements if the substitute, volunteer, or contractor:

(1) Has at least six months of documented prior experience in a regulated operation; or

(2) Provides documentation of at least eight clock hours of training in the areas specified in §744.1305 of this chapter (relating to What areas of training must the pre-service training for caregivers cover?) at another regulated operation.

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

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

26 TAC §744.2001, §744.2009

STATUTORY AUTHORITY

The amendment and new section are authorized by Texas Government Code §531.0055, which provides that the Executive

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

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

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

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

(1) Flexible programming according to each child's age, interest, and abilities;

(2) Encouraging communication and expression of feelings in appropriate ways;

(3) Study time for those children who choose to work on homework assignments;

(4) Physical care routines appropriate to each child's developmental needs; and

(5) A caregiver who is aware of the arrival and departure of each child, including dismissing children who ride the bus or walk home.

[~~(b) You must ensure that children who need special care due to disabling or limiting conditions receive the care recommended by a health-care professional or qualified professionals affiliated with the local school district or early childhood intervention program. These basic care requirements must be documented and on file for review at the operation during your hours of operation. Activities must integrate all children with or without special care needs. You may need to adapt equipment and vary methods to ensure that you care for children with special needs in a natural environment.~~]

§744.2009. What are my responsibilities when planning activities for a child in care with special care needs?

You must:

(1) Provide a child with special care needs with the accommodations recommended by:

(A) A health-care professional; or

(B) A qualified professional affiliated with the local school district;

(2) Utilize as recommended any adaptive equipment that has been provided to the operation for a child's use;

(3) Ensure that a child who receives specialized services, such as speech therapy, occupational therapy, or physical therapy, for the child's disability can receive those services from a qualified service provider at your operation, with parental request and approval;

(4) Ensure that activities integrate all children with special care needs; and

(5) Ensure that caregivers adapt equipment and procedures and vary methods as necessary to ensure that you care for a child with special needs in a natural environment.

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. DISCIPLINE AND GUIDANCE

26 TAC §744.2105

STATUTORY AUTHORITY

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

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

§744.2105. What types of discipline and guidance or punishment are prohibited?

There must be no harsh, cruel, or unusual treatment of any child. The following types of discipline and guidance are prohibited:

(1) Corporal punishment or threats of corporal punishment;

(2) Punishment associated with food, naps, or toilet training;

(3) Grabbing or pulling on a child;

[~~(3) Pinching, shaking, or biting a child;~~]

[~~(4) Hitting a child with a hand or instrument;~~]

(4) [~~(5)~~] Putting anything in or on a child's mouth;

(5) [~~(6)~~] Humiliating, ridiculing, rejecting, or yelling at a child;

(6) [~~(7)~~] Subjecting a child to harsh, abusive, or profane language;

(7) [~~(8)~~] Placing a child in a locked or dark room, bathroom, or closet;

(8) [~~(9)~~] Withholding active play or keeping a child inside as a consequence for behavior, unless the child is exhibiting behavior during active play that requires a brief supervised separation or time out that is consistent with §744.2103(b)(4) of this subchapter (relating to What methods of discipline and guidance may a caregiver use?); and

(9) [~~(10)~~] Requiring a child to remain silent or inactive for inappropriately long periods of time for the child's age.

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

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SUBCHAPTER H. NAPTIME
DIVISION 1. NAPTIME

26 TAC §744.2209

STATUTORY AUTHORITY

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

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

§744.2209. Must I arrange the napping equipment in a specific manner?

Napping equipment must:

(1) Not block entrances or exits to the area;

(2) Not be set up during other activities or left in place to interfere with children's activity space;

(3) Be arranged so that each child and caregiver has access to a walkway without having to walk on or over the sleep or rest equipment of other children; and

(4) Be arranged so the caregiver can adequately supervise all of the children in the group as specified in §744.1205 of this chapter [~~title~~] (relating to What responsibilities does a caregiver have when supervising a child or children? [~~What does Licensing mean by "supervise children at all times"?~~]).

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 J. NUTRITION AND FOOD SERVICE

26 TAC §744.2401

STATUTORY AUTHORITY

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

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

§744.2401. What are the basic requirements for meal and snack times?

(a) You must serve all children regular meals and morning and afternoon snacks as specified in this subchapter.

(b) The meals and snacks must follow the meal patterns established by the U.S. Department of Agriculture (USDA) Child and Adult Care Food Program (CACFP) that is administered by the Texas Department of Agriculture. You must follow these patterns regardless of whether you are participating in the program for reimbursement.

(c) If you serve breakfast, you do not have to serve a morning snack.

(d) A child must not go more than three hours without a meal or snack being offered[~~,~~] unless the child is sleeping.

(e) You must serve enough food to allow a child to have [~~children~~] a second serving from the vegetable, fruit, grain, and milk groups if the child requests it.

(f) You must ensure a supply of clean, sanitary drinking water:

(1) Is [~~is~~] readily available to each child at every snack, mealtime, and during and after active play; and

(2) Is [~~is~~] served in a safe and sanitary manner.

(g) You must not serve beverages with added sugars, such as carbonated beverages, fruit punch, or sweetened milk, unless otherwise allowed by the CACFP.

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

(i) You must not serve a child a food identified on the child's food allergy emergency plan as specified in §744.2667 of this chapter (relating to What is a food allergy emergency plan?).

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

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SUBCHAPTER K. HEALTH PRACTICES
DIVISION 3. ILLNESS AND INJURY

26 TAC §744.2571

STATUTORY AUTHORITY

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

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

§744.2571. What type of illness would prohibit a child from attending the operation?

You must not allow an ill child to attend your operation if one or more of the following exists:

(1) The illness prevents the child from participating comfortably in the operation activities, including outdoor play;

(2) The illness results in a greater need for care than caregivers can provide without compromising the health, safety, and supervision of the other children in care;

(3) The child has one of the following (unless a medical evaluation by a health-care professional indicates that you can include the child in your operation's activities):

(A) An oral temperature above 101 degrees that is accompanied by behavior changes or other signs or symptoms of illness;

(B) A tympanic (ear) temperature above 100 degrees that is accompanied by behavior changes or other signs or symptoms of illness;

(C) An axillary (armpit) temperature above 100 degrees that is accompanied by behavior changes or other signs or symptoms of illness; [~~or~~]

(D) An infrared temporal (forehead) temperature above 100 degrees that is accompanied by behavior changes or other signs or symptoms of illness; or

(E) [~~(D)~~] Symptoms and signs of possible severe illness such as lethargy, abnormal breathing, uncontrolled diarrhea, two or more vomiting episodes in 24 hours, rash with fever, mouth sores with drooling, behavior changes, or other signs that the child may be severely ill; or

(4) A health-care professional has diagnosed the child with a communicable disease, and the child does not have medical documentation to indicate that the child is no longer contagious.

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

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SUBCHAPTER L. SAFETY PRACTICES
DIVISION 4. FIRST-AID KITS

26 TAC §744.2753

STATUTORY AUTHORITY

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

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

§744.2753. What items must each first-aid kit contain?

(a) Each first-aid kit must contain the following supplies:

(1) A guide to first aid and emergency care;

(2) Adhesive tape;

(3) Antiseptic solution or wipes;

[~~(4) Cotton balls;~~]

(4) [~~(5)~~] Adhesive [~~Multi-size adhesive~~] bandages;

(5) [~~(6)~~] Scissors;

(6) [~~(7)~~] Sterile gauze pads;

(7) [~~(8)~~] Thermometer, preferably non-glass;

(8) [~~(9)~~] Tweezers; and

(9) [~~(10)~~] Waterproof, disposable gloves.

(b) The first-aid supplies must not have expired.

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 M. PHYSICAL FACILITIES

DIVISION 1. INDOOR SPACE REQUIREMENTS

26 TAC §744.2911

STATUTORY AUTHORITY

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

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

§744.2911. May I care for children above or below ground level?

To care for children on any level above or below ground level, you must:

(1) Obtain written approval from the state or local fire authority; and

(2) Follow any restrictions issued by the state or local fire authority, including any age limits placed on the approval.

[~~You must not care for children on any level above or below ground level without written approval from the state or local fire marshal.~~]

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SUBCHAPTER N. INDOOR AND OUTDOOR ACTIVE PLAY SPACE AND EQUIPMENT
DIVISION 5. SOFT CONTAINED PLAY EQUIPMENT

26 TAC §744.3301

STATUTORY AUTHORITY

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

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

§744.3301. What is soft contained play equipment?

Soft contained play equipment is a play structure that:

(1) Is fully enclosed with pliable material such as net, plastic, or fabric;

(2) The user enters to access one or more play components; and

(3) Allows caregivers to supervise children as specified in §744.1205 of this chapter [~~title~~] (relating to What responsibilities does a caregiver have when supervising a child or children? [~~What does Licensing mean by "supervise children at all times"?~~]).

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 Q. TRANSPORTATION

26 TAC §744.3807

STATUTORY AUTHORITY

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

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

§744.3807. What child passenger safety seat system must I use when I transport children?

(a) You must use a child passenger safety seat system to restrain a child when transporting the child. The restraint system:

(1) Must [~~must~~] meet the federal standards for crash-tested systems as set by the National Highway Traffic Safety Administration; and

(2) Must [~~must~~] be properly secured in the vehicle according to manufacturer's instructions.

(b) You must use child safety seats and child booster seats that have not expired or been damaged or involved in an accident.

(c) [~~(b)~~] You must secure each child in a rear-facing convertible child safety seat, forward-facing child safety seat, child booster seat, safety vest, harness, or a safety belt, as appropriate to the child's

age, height, and weight according to manufacturer's instructions for all vehicles specified in subsection (e) [~~(d)~~] of this section, unless otherwise noted in this subchapter.

(d) [~~(c)~~] A child 12 years old or younger must not ride in the front seat of a vehicle.

(e) [~~(d)~~] The following safety restraint devices for a child must be used when the vehicle is on and during all times when the vehicle is in motion:

Figure: 26 TAC §744.3807(e)

[~~Figure: 26 TAC §744.3807(d)~~]

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

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CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§746.121, 746.123, 746.201, 746.305, 746.307, 746.309, 746.405, 746.501, 746.605, 746.701, 746.901, 746.1015, 746.1017, 746.1037, 746.1203, 746.1301, 746.1309, 746.1311, 746.1317, 746.1319, 746.1323, 746.1401, 746.1605, 746.2201, 746.2403, 746.2405, 746.2415, 746.2426, 746.2427, 746.2503, 746.2703, 746.2805, 746.2909, 746.3205, 746.3301, 746.3601, 746.3701, 746.4003, 746.4217, 746.4403, 746.4951, 746.5607, and 746.5625; new §§746.1005, 746.1011, 746.1205, 746.1403, 746.1405, 746.2202, 746.2424, and 746.2601; and repeal of §§746.1011, 746.1205, and 746.2601 in Title 26, Texas Administrative Code, Chapter 746, Minimum Standards for Child-Care Centers.

BACKGROUND AND PURPOSE

This proposal is necessary to comply with Texas Human Resources Code (HRC) §42.042(b), which requires HHSC Child Care Regulation (CCR) to conduct a comprehensive review of minimum standards at least once every six years.

The purpose of the comprehensive review is to (1) identify any minimum standards that need clarification and amend them; (2) identify any minimum standards that may not have the intended outcome and amend or repeal them; (3) ensure that minimum standards are consistent with current research, best practices, and other guidelines; and (4) ensure regulatory requirements support the availability and affordability of child day care without compromising children's overall health and safety.

The proposed changes are the result of recommendations based on input from CCR staff and stakeholders, including child-care providers, caregivers, advocates, parents, and the public, compiled during the comprehensive review of all minimum standards located in Chapter 746.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §746.121 corrects the title of the department and agency that regulate child care centers.

The proposed amendment to §746.123 (1) adds definitions for "activity plan," "contract service provider," "hazardous materials," and "weather permitting"; (2) updates the definition for "age-appropriate" to include the child's assigned classroom and the developmental age of the child; (3) updates the definition of "caregiver" to include a reference to the newly defined term "contract service provider"; (4) updates the definition of "certified lifeguard" to require that the training certificate be current and relevant to the type of water activity in which children will engage; (5) updates the definition of "corporal punishment" to include hitting a child with a hand or instrument, pinching, shaking, and biting a child; (6) updates the definition of "sanitize" to (A) add information about disinfecting products, (B) remove the allowance for EPA-registered sanitizing products or disinfecting solutions that do not include labelling instructions for sanitizing (except for bleach), (C) clarify that soaking in or spraying on a bleach solution is a separate step from rinsing items children are likely to mouth, and (D) renumber the steps for sanitizing with bleach accordingly; (7) updates the definition of "special care needs" to include comprehension, emotional regulation, and a limitation due to an injury, illness, or allergy; (8) changes the term "state or local fire marshal" to "state or local fire authority" and updates the definition to be consistent with rules in other CCR chapters; and (9) updates the numbering of the definitions accordingly.

The proposed amendment to §746.201 (1) updates employee and volunteer requirements for reporting suspected abuse, neglect, or exploitation, to clarify that (A) an employee may not delegate the responsibility to make a report, and (B) an operation may not require an employee to seek approval to file a report or notify the operation that a report was made; and (2) adds language to clarify that ensuring the confidentiality of background check information includes not disclosing background check information to unauthorized persons.

The proposed amendment to §746.305 adds language to clarify that an operation must report to CCR the occurrence of a non-routine situation that places, or may place, a child at risk for injury or harm.

The proposed amendment to §746.307 adds language to clarify that an operation must report to the child's parents when the child has been involved in a non-routine situation that placed, or may have placed, a child at risk for injury or harm.

The proposed amendment to §746.309 updates the title of a rule reference.

The proposed amendment to §746.405 adds the telephone number for poison control.

The proposed amendment to §746.501 adds a requirement that an operation add to its operational policies (1) criteria the operation will use to determine when extreme weather conditions pose a significant health risk that prohibits or limits outdoor play; and (2) procedures for supporting inclusive services to children with special care needs that include the requirements in proposed new §746.2202.

The proposed amendment to §746.605 (1) updates the special care needs statement included with a child's admission information to require the inclusion of any limitations or restrictions on the child's activities and special care the child requires, includ-

ing (A) any reasonable accommodations or modifications, (B) any adaptive equipment provided for the child, and (C) symptoms or indications of potential complications related to a physical, cognitive, or mental condition that may warrant prevention or intervention while the child is in care; (2) deletes the previous special care needs statement requirements regarding the inclusion of existing illness, previous serious illness and injuries, and hospitalizations during the past twelve months; and (3) moves the requirement to include allergies as part of the special care needs statement to the section of the rule that requires the operation to obtain a completed food allergy emergency plan.

The proposed amendment to §746.701 adds language to clarify that an operation must keep a written record of any non-routine situation that placed, or may have placed, a child at risk for injury or harm on the Licensing *Incident/Illness Report* Form 7239 or on another form with the same information.

The proposed amendment to §746.901 adds to the requirement that an operation maintain a record of training hours in its personnel records, a requirement that the operation also maintain documentation verifying that employees have met training requirements.

Proposed new §746.1005 (1) requires a governing body with multiple operations to designate a separate director for each operation; and (2) provides a compliance date of no later than March 1, 2025, for operations that currently have a single director designated for more than one operation.

Proposed new §746.1011 outlines how often a child-care center director must be present at the operation. The proposed rule (1) requires a director to be present a minimum of 75 percent of the program's hours weekly, or a minimum of 30 hours weekly, whichever is less; (2) provides exceptions for temporary absences, due to vacation or other personal time off, and professional development activities; and (3) provides a compliance date of no later than March 1, 2025, for operations that currently have a single director designated for more than one operation.

The proposed repeal of §746.1011 deletes the rule as no longer necessary because the content of the rule has been substantively altered in proposed new §746.1011.

The proposed amendment to §746.1015 (1) updates a reference; and (2) updates and reorganizes language and punctuation for better readability and understanding.

The proposed amendment to §746.1017 (1) updates a reference; and (2) updates and reorganizes language and punctuation for better readability and understanding.

The proposed amendment to §746.1037 (1) updates language for better readability and understanding; and (2) updates the title of a rule reference.

The proposed amendment to §746.1203 (1) deletes requirements for caregivers to know which children they are responsible for and know each child's name and have information showing each child's age, as those requirements are now included in proposed new §746.1205; (2) updates a reference; (3) updates the title of a rule reference; (4) deletes the requirement for caregivers to ensure children are not out of control and replaces it with a requirement that caregivers set appropriate behavior expectations based on the child's current stage of development; (5) adds a requirement that caregivers provide care that is consistent with a child's habits, interests, strengths, and any special needs; and (6) updates the numbering of the paragraphs accordingly.

Proposed new §746.1205 outlines the responsibilities a caregiver has when supervising children. The proposed rule (1) incorporates two requirements deleted from proposed amended §746.1203; (2) incorporates requirements from proposed repealed §746.1205; (3) adds a requirement that caregivers know how many children they are responsible for; (4) adds requirements for caregivers to take into consideration when supervising a child (A) the child's current stage of development, and (B) the child's physical, mental, emotional, and social needs; and (5) updates the requirement in proposed repealed §746.1205, that a caregiver supervising a child take into consideration the neighborhood circumstances, hazards, and risks, to require the caregiver to take into consideration the circumstances, hazards, and risks surrounding the child.

The proposed repeal of §746.1205 deletes the rule as no longer necessary because the content of the rule has been updated and re-proposed in new §746.1205.

The proposed amendment to §746.1301 (1) updates the rule title for better readability and understanding; (2) updates punctuation, language, and syntax for better readability and understanding; and (3) adds new subsection (b) to clarify that at least one caregiver or employee with a current certification in pediatric CPR must be on the premises with a caregiver or employee without current pediatric CPR certification.

The proposed amendment to §746.1309 converts from a percentage to a whole number the amount of annual caregiver training hours that may be self-instructional.

The proposed amendment to §746.1311 converts from a percentage to a whole number the amount of annual child-care center director training hours that may be self-instructional.

The proposed amendment to §746.1317 updates language and reorganizes a paragraph for better readability and understanding.

The proposed amendment to §746.1319 (1) updates language and punctuation for better readability and understanding; and (2) adds new subsection (b) to require that any block certification training allocate clock hours to each specific training topic.

The proposed amendment to §746.1323 updates the title of a rule reference.

The proposed amendment to §746.1401 (1) replaces the phrase "persons under contract with my center" with the word "contractors" in the title of the rule; (2) deletes clarifications regarding contractors as these specifications are now included in the definition of "contractor" in proposed amended §746.123; (3) adds a requirement that substitutes, volunteers, and contractors comply with existing training requirements now delineated in proposed new §746.1403; (4) deletes the requirement that all substitutes, volunteers, and contractors complete orientation because the requirement has been incorporated into proposed new §746.1403; (5) deletes the requirement that substitutes, volunteers, and caregivers counted in the child to caregiver ratio must complete all required pre-service training within 90 days or cease performing caregiver duties until the training is complete because the requirement has been incorporated into proposed new §746.1403; and (6) updates the numbering of the subsections accordingly.

Proposed new §746.1403 outlines the training requirements for substitutes, volunteers, and contractors. The proposed new rule (1) incorporates requirements in proposed amended §746.1401 that require substitutes, volunteers, and contractors to comply

with minimum standards that apply to employees or caregivers, depending on their role at the operation, but focuses solely on minimum standards related to training; and (2) includes a requirement that least one caregiver or employee with a current certification in pediatric CPR be on the premises with a substitute, volunteer, or contractor without current pediatric CPR certification if the substitute, volunteer, or contractor is counted in the child to caregiver ratio.

Proposed new §746.1405 outlines the circumstances that exempt a substitute, volunteer, or contractor from pre-service training. These circumstances include if a substitute, volunteer, or contractor (A) has at least six months of documented prior experience in a regulated child-care center, or (B) can provide documentation of at least eight clock hours of training in areas specified in §746.1305.

The proposed amendment to §746.1605 (1) updates the rule title for better readability and understanding; (2) adds a paragraph referencing current §746.1703 to clarify that a child-care center may combine infants with children 18 months of age and older without regard to age when the center has 12 or fewer children in care; and (3) updates the numbering of the paragraphs accordingly.

The proposed amendment to §746.2201 (1) updates the rule title for better readability and understanding; (2) deletes subsection (b) as no longer necessary because the content has been updated and re-proposed in proposed new §746.2202; and (3) removes the subsection numbers, since they are no longer necessary.

Proposed new §746.2202 outlines the child-care center's responsibilities when planning activities for a child in care with special care needs. The proposed new rule (1) incorporates and updates requirements from deleted subsection (b) of proposed amended §746.2201, with the exception of the requirement to maintain documentation of basic care requirements on file at the child-care center, because that component is required elsewhere in Chapter 746; (2) clarifies that the child-care center must provide a child with special care needs the accommodations recommended by a qualified professional; (3) adds a requirement that a child-care center utilize as recommended any adaptive equipment that has been provided for a child's use; (4) adds a requirement that a child-care center ensure that a child who receives specialized services for the child's disability can receive those services from a qualified service provider at the operation, with parental request and approval; and (5) adds a requirement that caregivers adapt procedures as necessary to care for a child with special needs in a natural environment.

The proposed amendment to §746.2403 adds a reference to another rule in the chapter.

The proposed amendment to §746.2405 adds language to clarify that a child-care center is required to have an individual crib, cot, bed, or mat for each walking and non-walking infant 12 months of age or older.

The proposed amendment to §746.2415 (1) updates punctuation; and (2) adds a play yard as sleeping equipment that must be bare, except for a tight-fitting sheet, for an infant younger than 12 months of age.

Proposed new §746.2424 requires an infant to sleep in a designated crib, cot, bed, or mat.

The proposed amendment to §746.2426 (1) reorganizes the rule; (2) updates language for better readability and understanding; and (3) adds language to clarify that an infant may not sleep in a restrictive device unless the operation has a Sleep Exception Form with a signed statement from a health-care professional.

The proposed amendment to §746.2427 (1) updates the rule title for better readability and understanding; (2) adds a requirement that an employee or caregiver place an infant in a face-up sleeping position, regardless of whether the infant can turn over independently, unless there is a completed Sleep Exception form on file for the infant; and (3) adds language to clarify that an infant who is developmentally able to roll from back to stomach and stomach to back may do so independently after the employee or caregiver has placed the infant in a face-up position for sleep.

The proposed amendment to §746.2503 (1) updates a reference; and (2) updates the title of a rule reference.

Proposed new §746.2601 outlines the basic care requirements for pre-kindergarten age children. The rule (1) incorporates the requirements from proposed repealed §746.2601; and (2) adds a requirement that basic care include routines such as diapering or toileting, eating, napping resting, and indoor and outdoor activity times.

The proposed repeal of §746.2601 deletes the rule as no longer necessary because the content of the rule has been updated and re-proposed in new §746.2601.

The proposed amendment to §746.2703 (1) updates a reference; and (2) updates the title of a rule reference.

The proposed amendment to §746.2805 (1) expands the list of prohibited discipline and guidance measures to include grabbing or pulling on a child and placing a child in a restrictive device for time out; (2) deletes from the list pinching, shaking, or biting a child and hitting a child with a hand or instrument, because those requirements have been incorporated into the definition of corporal punishment in the proposed amendment to §746.123; (3) deletes a reference to requiring a child to remain in a restrictive device in the requirement that prohibits a child to remain silent or inactive for inappropriately long period of time, because that content has been clarified and added as a separate type of prohibited discipline and guidance; and (4) updates the numbering of the paragraphs accordingly.

The proposed amendment to §746.2909 updates a reference.

The proposed amendment to §746.3205 updates a reference.

The proposed amendment to §746.3301 (1) updates punctuation; (2) adds language to clarify that an operation must serve enough food to allow a child to have a second serving from the vegetable, fruit, grain, and milk groups if the child requests it; (3) adds a requirement that the supply of drinking water be clean, sanitary, and available during active play and reorganizes the subsection into two paragraphs for better readability and understanding; and (4) clarifies that the operation may not serve beverages with added sugars unless otherwise allowed by the Child and Adult Care Food Program.

The proposed amendment to §746.3601 (1) adds an allowance for a child-care center to use an infrared temporal (forehead) thermometer to assess a child's temperature and provides guidelines for a temperature reading indicative of illness; and (2) updates the numbering of the subparagraphs accordingly.

The proposed amendment to §746.3701 (1) adds bottle warmers to the list of hazards that must be inaccessible to children and requires that they be used only according to manufacturer

instructions; and (2) updates the numbering of the paragraphs accordingly.

The proposed amendment to §746.4003 (1) deletes the requirement for cotton balls in a first-aid kit; (2) amends the requirement for adhesive bandages in a first-aid kit so that they do not have to be multi-sized; and (3) updates the numbering of the paragraphs accordingly.

The proposed amendment to §746.4217 (1) adds a requirement that a child-care center follow any restrictions issued by the state or local fire authority when seeking approval to care for children above or below ground level; and (2) reorganizes the rule into paragraphs.

The proposed amendment to §746.4403 updates a reference.

The proposed amendment to §746.4951 updates a reference.

The proposed amendment to §746.5607 (1) reorganizes the rule for better readability and understanding; (2) adds a requirement that a child-care center may only use child safety seats and child booster seats that have not expired or been damaged or involved in an accident; (3) updates the numbering of the subsections accordingly; and (4) updates the safety restraint device requirements to be consistent with current recommendations from the Texas Department of Transportation and the American Academy of Pediatrics.

The proposed amendment to §746.5625 adds a requirement that the driver or designated employee (A) verify that all children have been accounted for, and (B) conduct a physical walk-though and visual check of the vehicle to ensure no children remain in the vehicle before disabling the alarm of a vehicle equipped with an electronic child safety alarm from the rear of the vehicle.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

(5) the proposed rules will create new rules;

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

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

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

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

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

Chapter 2006 of Texas Government Code defines a small business as one that is for-profit with fewer than 100 employees. A micro-business is one that is for-profit with fewer than 20 employees. Based on data obtained from the 2020 CCR Data Book, there are approximately 8,040 Licensed Child-Care Centers required to comply with the rules. CCR conducted a survey of licensed child-care operations in 2019 to determine which operations met the definition of a small or micro-business and received responses from approximately nine percent of Licensed Child-Care Centers. Based on the results from that survey, CCR estimates that 59 percent of the centers (or 4,744 centers) are for profit. Of those centers, approximately 99 percent of the centers (or 4,697 centers) have less than 100 employees and qualify as small businesses and approximately 77 percent of those small businesses (or 3,617 centers) have less than 20 employees and qualify as micro-businesses.

There is a projected economic impact on small businesses and micro-businesses from proposed §§746.501, 746.1005, and 746.5607.

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

Section 746.501 requires an operation to develop in its operational policies criteria the operation will use to determine when extreme weather conditions pose a significant health risk that prohibits or limits outdoor play and written procedures for supporting inclusive services to children with special care needs. Historically, operations have indicated a labor cost to update operational policies to bring them into compliance with proposed rule changes. HHSC does not have enough information to determine these costs as developing the policy and procedures will vary greatly with individual business structure.

Section 746.1005 requires a governing body that has designated a single child-care center director for more than one operation to designate a single director for each operation no later than March 1, 2025. Based on data collected in March 2022, CCR estimates there are approximately 36 governing bodies that have designated a single child-care center director as the primary director for more than one licensed child-care center. To comply with the rule, each of those governing bodies must hire an additional director by March 1, 2025. An assessment of the average salary for a child-care center director in Texas revealed that the salary ranges from $29,000 to $70,000 annually, depending on director experience and the area of the state where the position is located. The estimated salary range does not include additional employer costs to provide benefits or training to the employee and HHSC is unable to ascertain these costs. As a result, HHSC does not have enough information to determine economic costs for persons required to comply with the rule as proposed.

Section 746.5607 requires an operation to use only child safety seats and child booster seats that have not expired or been damaged or involved in an accident. While this requirement was previously a best practice suggestion and may be common practice among child-care centers currently, the proposed rule may require some operations to purchase new child safety seats and child booster seats to comply with the proposed rule. In April 2021, Consumer Reports indicated the average child safety seat cost ranges from $40 to $450, depending on the model of the

child safety seat. In the same assessment, Consumer Reports indicated a child booster seat cost ranges from $11 to $320. Although HHSC can use this information to ascertain a general cost range to replace child safety seats and child booster seats, HHSC is unable to determine which operations will need to replace child safety seats or child booster seats, the model or type of safety seat an operation will purchase, or the number of seats an operation may need to purchase. HHSC is also unable to determine how many child-care centers to exclude from the economic impact because they use seats provided by children's parents. As a result, HHSC does not have enough information to determine economic costs for persons required to comply with the rule as proposed.

HHSC determined that alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of children attending child-care operations in Texas.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be regulatory requirements that reflect current research, best practices and guidelines around child safety and well-being, rules that clarify provider requirements, and rules that comply with state law.

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Aimee Belden by email at Aimee.Belden@hhs.texas.gov.

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 21R158" in the subject line.

SUBCHAPTER A. PURPOSE, SCOPE, AND DEFINITIONS

DIVISION 3. DEFINITIONS

26 TAC §746.121, §746.123

STATUTORY AUTHORITY

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

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

§746.121. What do certain pronouns mean when used in this chapter?

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

(1) I, my, you, and your--An applicant or permit holder, unless otherwise stated.

(2) We, us, our, and Licensing--The Child Care Regulation department of the Texas Health and Human Services Commission (HHSC) [~~The Licensing Division of the Texas Department of Family and Protective Services (DFPS)~~].

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

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

(1) Activity plan--A written plan that outlines the daily routine and activities in which a child will engage while in your care. The plan is designed to meet the child's cognitive, language, social, emotional, and physical developmental strengths and needs.

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

(3) [~~(2)~~] Administrative and clerical duties--Duties that involve the operation of a child-care center, such as bookkeeping, enrolling children, answering the telephone, and collecting fees.

(4) [~~(3)~~] Admission--The process of enrolling a child in a child-care center. The date of admission is the first day the child is physically present in the center.

(5) [~~(4)~~] Adult--A person 18 years old and older.

(6) [~~(5)~~] Age-appropriate--Activities, equipment, materials, curriculum, and environment, including the child's assigned classroom, that are developmentally consistent with the developmental or chronological age of the child being served.

(7) [~~(6)~~] Alternate care program--A program in which no child is in care for more than five consecutive days, and no child is in care for more than 15 days in one calendar month, regardless of the duration of each stay.

(8) [~~(7)~~] Attendance--When referring to a child's attendance, the physical presence of a child at the child-care center's program on any given day or at any given time, as distinct from the child's enrollment in the child-care center.

(9) [~~(8)~~] Bouncer seat--A stationary seat designed to provide gentle rocking or bouncing motion by an infant's movement, or by battery-operated movement. This type of equipment is designed for an infant's use from birth until the child can sit up unassisted.

(10) [~~(9)~~] Caregiver--A person who is counted in the child to caregiver ratio, whose duties include the supervision, guidance, and protection of a child. As used in this chapter, a caregiver must meet the minimum education, work experience, and training qualifications required under Subchapter D of this chapter (relating to Personnel). A caregiver is usually an employee, but may also be a substitute, volunteer, or contractor, as outlined in paragraph (19) of this section and Subchapter D, Division 5 of this chapter.

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

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

(13) [~~(12)~~] CEUs--Continuing education units. A standard unit of measure for adult education and training activities. One CEU equals 10 clock hours of participation in an organized, continuing-education experience, under responsible, qualified direction and instruction. Although a person may obtain a CEU in many of the same settings as clock hours, the CEU provider must meet the criteria established by the International Association for Continuing Education and Training to be able to offer the CEU.

(14) [~~(13)~~] Child--An infant, a toddler, a pre-kindergarten age child, or a school-age child.

(15) [~~(14)~~] Child-care center--A child-care facility that is licensed to care for seven or more children for less than 24 hours per day, at a location other than the permit holder's home. If you were licensed before September 1, 2003, the location of the center could be in the permit holder's home.

(16) [~~(15)~~] Child-care program--The services and activities provided by a child-care center.

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

(18) [~~(17)~~] Clock hour--An actual hour of documented:

(A) Attendance at instructor-led training, such as seminars, workshops, conferences, early childhood classes, and other planned learning opportunities, provided by an individual or individuals as specified in §746.1317(a) of this chapter (relating to Must the training for my caregivers and the director meet certain criteria?); or

(B) Self-instructional training that was created by an individual or individuals, as specified in §746.1317(a) and (b) of this chapter, or self-study training.

(19) Contract service provider--A person or entity contracting with the operation to provide a service, whether paid or unpaid. Also referred to as "contract staff" and "contractor" in this chapter.

(20) [~~(18)~~] Corporal punishment--The infliction of physical pain on a child as a means of controlling behavior. This includes spanking, hitting with a hand or instrument, slapping, pinching, shaking, biting, or thumping a child.

(21) [~~(19)~~] Days--Calendar days, unless otherwise stated.

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

(23) [~~(21)~~] Enrollment--The list of names or number of children who have been admitted to attend a child-care center for any given period of time; the number of children enrolled in a child-care center may vary from the number of children in attendance on any given day.

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

(25) [~~(23)~~] Field trips--Activities conducted away from the child-care center.

(26) [~~(24)~~] Food service--The preparation or serving of meals or snacks.

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

(28) [~~(26)~~] Garbage--Waste food or items that when deteriorating cause offensive odors and attract rodents, insects, and other pests.

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

(30) Hazardous materials--Any substance or chemical that is a health hazard or physical hazard, as determined by the Environmental Protection Agency. Also referred to as "toxic materials" and "toxic chemicals" in this chapter.

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

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

(33) [~~(30)~~] High school equivalent--

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

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

(34) [~~(31)~~] Individual activities--Opportunities for the child to work independently or to be away from the group[~~,~~] but supervised.

(35) [~~(32)~~] Infant--A child from birth through 17 months.

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

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

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

(39) [~~(36)~~] Local sanitation official--A sanitation official designated by the city or county government.

(40) [~~(37)~~] Natural environment--Settings that are natural or typical for all children of the same age without regard to ability or disability. For example, a natural environment for learning social skills is a play group of peers.

(41) [~~(38)~~] Permit is no longer valid--For purposes of this chapter, a permit remains valid through the renewal process. A permit only becomes invalid when your center voluntarily closes or must close because of an enforcement action in Chapter 745, Subchapter L of this title (relating to Enforcement Actions).

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

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

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

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

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

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

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

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

(A) Washing with water and soap;

(B) Rinsing with clear water;

(C) Soaking in or spraying on a bleach [~~disinfecting~~] solution for at least two minutes;[~~.~~]

(D) Rinsing with cool water only those items that children are likely to place in their mouths; and

(E) [~~(D)~~] Allowing the surface or item to air-dry.

(50) [~~(47)~~] School-age child--A child who is five years of age and older and is enrolled in or has completed kindergarten.

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

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

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

(54) [~~(51)~~] Special care needs--A child with special care needs is a child who has:

(A) A [~~a~~] chronic physical, developmental, behavioral, or emotional condition and who also requires assistance beyond that required by a child generally to perform tasks that are within the typical chronological range of development, including the movement of large or small muscles, learning, talking, communicating, comprehension, emotional regulation, self-help, social skills, emotional well-being, seeing, hearing, and breathing; or

(B) A limitation due to an injury, illness, or allergy.

(55) [~~(52)~~] State or local fire authority [~~marshal~~]--A fire official who is authorized to conduct fire safety inspections on behalf of [~~designated by~~] the city, county, or state government, including certified fire inspectors. Also referred to as "fire marshal" in this chapter.

(56) [~~(53)~~] Toddler--A child from 18 months through 35 months.

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

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

(59) Weather permitting--Weather conditions that do not pose any concerns for health and safety, such as a significant risk of frostbite or heat-related illness. This includes adverse weather conditions in which children may still play safely outdoors for shorter periods with appropriate adjustments to clothing and any necessary access to water, shade, or shelter.

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

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Karen Ray
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SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION
DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

26 TAC §746.201

STATUTORY AUTHORITY

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

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

§746.201. What are my responsibilities as the permit holder?

You are responsible for:

(1) Developing and implementing your child-care center's operational policies, which must comply with or exceed the minimum standards specified in this subchapter;

(2) Developing written personnel policies, including job descriptions, job responsibilities, and requirements;

(3) Making provisions for training that comply with Division 4, Subchapter D of this chapter (relating to Professional Development);

(4) Designating a child-care center director who meets minimum standard qualifications and has daily, on-site responsibility for the operation of the child-care center;

(5) Reporting and ensuring your employees and volunteers report suspected abuse, neglect, or exploitation directly to the Texas Abuse and Neglect Hotline [~~Texas Department of Family and Protective Services without delegating this responsibility~~], as required by Texas Family Code §261.101; an employee may not delegate the responsibility to make a report, and you may not require an employee to seek approval to file a report or notify you that a report was made;

(6) Ensuring all information related to background checks is kept confidential and not disclosed to unauthorized persons, as required by the Human Resources Code, §40.005(d) and (e);

(7) Ensuring parents can visit the child-care center any time during the child-care center's hours of operation to observe their child, program activities, the building, the grounds, and the equipment without having to secure prior approval;

(8) Complying with the liability insurance requirements in this division;

(9) Complying with the child-care licensing law found in Chapter 42 of the Human Resources Code, the applicable minimum standards, and other applicable rules in the Texas Administrative Code;

(10) Reporting to Licensing any Department of Justice substantiated complaints related to Title III of the Americans with Disabilities Act, which applies to commercial public accommodations; and

(11) Ensuring the total number of children in care at the center or away from the center, such as during a field trip, never exceeds the licensed capacity of the center.

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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DIVISION 2. REQUIRED NOTIFICATION

26 TAC §§746.305, 746.307, 746.309

STATUTORY AUTHORITY

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

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

§746.305. What other situations require notification to Licensing?

(a) You must notify us as soon as possible, but no later than two days after:

(1) Any occurrence that renders all or part of your center unsafe or unsanitary for a child;

(2) Injury to a child in your care that requires medical treatment by a health-care professional or hospitalization;

(3) A child in your care shows signs or symptoms of an illness that requires hospitalization;

(4) You become aware that an employee or child in your care contracts an illness deemed notifiable by the Texas Department of State Health Services as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases);

(5) A person for whom you are required to request a background check under Chapter 745, Subchapter F of this title (relating to Background Checks) is arrested or charged with a crime;

(6) The occurrence of any other non-routine situation that places, or may place, a child at risk for injury or harm, such as forgetting a child in a center vehicle or on the playground or not preventing a child from wandering away from the child-care center unsupervised; and

(7) A new individual becomes a controlling person at your operation, or an individual that was previously a controlling person ceases to be a controlling person at your operation.

(b) You must notify us immediately if a child dies while in your care.

§746.307. What emergency or medical situations must I notify parents about?

(a) You must notify the parent of a child immediately if there is an allegation that the child has been abused, neglected, or exploited, as defined in Texas Family Code §261.001, while in your care.

(b) After you ensure the safety of the child, you must notify the parent of the child immediately after the child:

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

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

(3) Has had an emergency anaphylaxis reaction that required administration of an unassigned epinephrine auto-injector;

(4) Has been involved in any non-routine situation that placed, or may have placed, the child at risk for injury or harm. For example, a caregiver forgetting the child in a center vehicle or failing to prevent the child from wandering away from the child-care center unsupervised; or

(5) Has been involved in any situation that renders the child-care center unsafe, such as a fire, flood, or damage to the child-care center as a result of severe weather.

(c) You must notify the parent of less serious injuries when the parent picks the child up from the child-care center. Less serious injuries include minor cuts, scratches, and bites from other children requiring first-aid treatment by employees.

(d) You must provide written notice to the parent of each child attending the child-care center within 48 hours of becoming aware that a child in your care or an employee has contracted a communicable disease deemed notifiable by the Texas Department of State Health Services, as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases).

(e) You must provide written notice to the parent of each child in a group within 48 hours when there is an outbreak of lice or other infestation in the group. You must either post this notice in a prominent and publicly accessible place where parents can easily view it or send an individual note to each parent.

§746.309. What are the notification requirements when Licensing finds my center deficient in a standard related to safe sleeping or the abuse, neglect, or exploitation of a child?

(a) You must notify the parent of each child attending your child-care center of a deficiency in:

(1) A safe sleeping standard noted in subsection (b) of this section; or

(2) The abuse, neglect, or exploitation standard in §746.1201(4) of this chapter (relating to What general responsibilities do my child-care center employees have?).

(b) The following are safe sleeping standards requiring notification:

(1) §746.2409(a)(1) of this chapter (relating to What specific safety requirements must my cribs meet?);

(2) §746.2411(2)(A) of this chapter (relating to Are play yards allowed?);

(3) §746.2415(a)(5) and (b) of this chapter (relating to What specific types of equipment am I prohibited from using with infants?);

(4) §746.2426 of this chapter (relating to May I allow infants to sleep in a restrictive device?);

(5) §746.2427 of this chapter (relating to How must I position an infant for sleep [~~Are infants required to sleep on their backs~~]?);

(6) §746.2428 of this chapter (relating to May I swaddle an infant to help the infant sleep?); and

(7) §746.2429 of this chapter (relating to If an infant has difficulty falling asleep, may I cover the infant's head or crib?).

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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DIVISION 3. REQUIRED POSTINGS

26 TAC §746.405

STATUTORY AUTHORITY

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

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

§746.405. What telephone numbers must I post and where must I post them?

You must post in a prominent place the following telephone numbers:

(1) 911 or, if 911 is not available in your area, you must post the telephone numbers for:

(A) Emergency medical services;

(B) Law enforcement; and

(C) Fire department;

(2) Poison control (1-800-222-1222);

(3) The Texas Abuse and Neglect Hotline (1-800-252-5400);

(4) The local Licensing office telephone number; and

(5) The child-care center telephone number, name, and address.

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DIVISION 4. OPERATIONAL POLICIES

26 TAC §746.501

STATUTORY AUTHORITY

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

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

§746.501. What written operational policies must I have?

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

(1) Hours, days, and months of operation;

(2) Procedures for the release of children;

(3) Illness and exclusion criteria;

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

(5) Procedures for handling medical emergencies;

(6) Procedures for parental notifications;

(7) Discipline and guidance that is consistent with Subchapter L of this chapter (relating to Discipline and Guidance). A copy of Subchapter L may be used for your discipline and guidance policy;

(8) Suspension and expulsion of children;

(9) Safe sleep policy for infants from birth through 12 months old that is consistent with the rules in Subchapter H of this chapter (relating to Basic Requirements for Infants) that relate to sleep requirements and restrictions, including sleep positioning, and crib requirements and restrictions, including mattresses, bedding, blankets, toys, and restrictive devices;

(10) Meals and food service practices;

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

(12) Hearing and vision screening requirements;

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

(14) Transportation, if applicable;

(15) Water activities, if applicable;

(16) Field trips, if applicable;

(17) Animals, if applicable;

(18) Promotion of indoor and outdoor physical activity that is consistent with Subchapter F of this chapter (relating to Developmental Activities and Activity Plan); your policies must include:

(A) The benefits of physical activity and outdoor play;

(B) The duration of physical activity at your operation, both indoor and outdoor;

(C) The type of physical activity (structured and unstructured) that children may engage in at your operation;

(D) Each setting in which your physical activity program will take place;

(E) The recommended clothing and footwear that will allow a child to participate freely and safely in physical activities; [~~and~~]

(F) The criteria you will use to determine when extreme weather conditions pose a significant health risk that prohibits or limits outdoor play; and

(G) [~~(F)~~] A plan to ensure physical activity occurs on days when extreme weather conditions prohibit or limit outdoor play.

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

(20) Procedures for parents to review and discuss with the child-care center director any questions or concerns about the policies and procedures of the child-care center;

(21) Procedures for parents to participate in the child-care center's operation and activities;

(22) Procedures for parents to review a copy of the child-care center's most recent Licensing inspection report and how the parent may access the minimum standards online;

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

(24) Your emergency preparedness plan;

(25) Your provisions to provide a comfortable place with an adult sized seat in your center or within a classroom that enables a mother to breastfeed her child. In addition, your policies must inform parents that they have the right to breastfeed or provide breast milk for their child while in care;

(26) Preventing and responding to abuse and neglect of children, including:

(A) Required annual training for employees;

(B) Methods for increasing employee and parent awareness of issues regarding child abuse and neglect, including warning signs that a child may be a victim of abuse or neglect and factors indicating a child is at risk for abuse or neglect;

(C) Methods for increasing employee and parent awareness of prevention techniques for child abuse and neglect;

(D) Strategies for coordination between the center and appropriate community organizations; and

(E) Actions that the parent of a child who is a victim of abuse or neglect should take to obtain assistance and intervention, including procedures for reporting child abuse or neglect;

(27) Procedures for conducting health checks, if applicable;

(28) Information on vaccine-preventable diseases for employees, unless your center is in the home of the permit holder. The policy must address the requirements outlined in §746.3611 of this chapter (relating to What must a policy for protecting children from vaccine-preventable diseases include?); [~~and~~]

(29) If your operation maintains and administers unassigned epinephrine auto-injectors to use when a child in care has an emergency anaphylaxis reaction, policies for maintenance, administration, and disposal of unassigned epinephrine auto-injectors that comply with the unassigned epinephrine auto-injector requirements set by the Texas Department of State Health Services, as specified in 25 TAC Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities) and in Texas Health and Safety Code §773.0145; and[~~.~~]

(30) Procedures for supporting inclusive services to children with special care needs. The policy must address the requirements outlined in §746.2202 of this chapter (relating to What are my responsibilities when planning activities for a child in care with special care needs?).

(b) You must also inform the parents that:

(1) They may visit the child-care center at any time during your hours of operation to observe their child, the program activities, the building, the premises, and the equipment without having to secure prior approval; and

(2) Under the Texas Penal Code any area within 1,000 feet of a child-care center is a gang-free zone, where criminal offenses related to organized criminal activity are subject to a harsher penalty. You may inform the parents by:

(A) Providing this information in the operational policies;

(B) Distributing the information in writing to the parents; or

(C) Informing the parents verbally as part of an individual or group parent orientation.

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SUBCHAPTER C. RECORD KEEPING
DIVISION 1. RECORDS OF CHILDREN

26 TAC §746.605

STATUTORY AUTHORITY

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

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

§746.605. What admission information must I obtain for each child?

You must obtain at least the following information before admitting a child to care:

(1) The child's name and birth date;

(2) The child's home address and telephone number;

(3) Date of the child's admission to the child-care center;

(4) Name and address of parent(s);

(5) Telephone numbers at which parent(s) can be reached while the child is in care;

(6) Name, address, and telephone number of another responsible individual (friend or relative) who should be contacted in an emergency when the parent cannot be reached;

(7) Names and telephone numbers of persons other than a parent to whom the child may be released;

(8) Permission for transportation, if provided;

(9) Permission for field trips, if provided;

(10) Permission for participation in water activities, if provided;

(11) Name, address, and telephone number of the child's physician or an emergency-care facility;

(12) Authorization to obtain emergency medical care and to transport the child for emergency medical treatment;

(13) A statement of the child's special care needs, which must include:[~~. This includes, but is not limited to, allergies, existing illness, previous serious illness and injuries, hospitalizations during the past 12 months, and any medications prescribed for continuous, long-term use~~];

(A) Any limitations or restrictions on the child's activities;

(B) Special care the child requires, including:

(i) Any reasonable accommodations or modifications;

(ii) Any adaptive equipment provided for the child; and

(iii) Symptoms or indications of potential complications related to a physical, cognitive, or mental condition that may warrant prevention or intervention while the child is in care; and

(C) Any medications prescribed for continuous, long-term use;

(14) The name and telephone number of the school that a school-age child attends, unless the operation is located at the child's school;

(15) Permission for a school-age child to ride a bus, walk to or from school or home, or to be released to the care of a sibling under 18 years old, if applicable; and

(16) The child's allergies and a [~~A~~] completed food allergy emergency plan for the child, if applicable.

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DIVISION 2. RECORDS OF ACCIDENTS AND INCIDENTS

26 TAC §746.701

STATUTORY AUTHORITY

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

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

§746.701. What written records must I keep of accidents and incidents that occur at my child-care center?

You must record the following information on the Licensing *Incident/Illness Report* Form 7239 or another form that contains at least the same information:

(1) An injury to a child in care that required medical treatment by a health-care professional or hospitalization;

(2) An illness that required the hospitalization of a child in care;

(3) An incident where a child in care had an emergency anaphylaxis reaction that required administration of an unassigned epinephrine auto-injector;

(4) An incident of a child in care or employee contracting a communicable disease deemed notifiable by the Texas Department of State Health Services, as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases); and

(5) Any other non-routine situation that placed, or may have placed, a child at risk for injury or harm, such as forgetting a child in a center vehicle or not preventing a child from wandering away from the child-care center unsupervised.

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DIVISION 4. PERSONNEL RECORDS

26 TAC §746.901

STATUTORY AUTHORITY

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

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

§746.901. What information must I maintain in my personnel records?

You must have the following records at the child-care center and available for review during hours of operation for each employee, caregiver, substitute, and volunteer as specified in this chapter:

(1) Documentation showing the dates of the first and last day on the job;

(2) Documentation showing how the employee meets the minimum age and education qualifications, if applicable;

(3) A copy of a health card or health care professional's statement verifying the employee is free of active tuberculosis, if required by the regional Texas Department of State Health Services TB program or local health authority;

(4) A notarized Licensing Affidavit for Applicants for Employment form as specified in Human Resources Code, §42.059;

(5) A record of training hours, including documentation required by §746.1329 of this chapter (relating to What documentation must I provide to Licensing to verify that employees have met training requirements?);

(6) A statement signed and dated by the employee showing he has received a copy of the child-care center's:

(A) Operational policies; and

(B) Personnel policies;

(7) Proof of request for background checks required under 40 TAC Chapter 745, Subchapter F (relating to Background Checks);

(8) A copy of a photo identification;

(9) A copy of a current driver's license for each person who transports a child in care; and

(10) A statement signed and dated by the employee verifying the date the employee attended training during orientation that includes an overview of your policy on the prevention, recognition, and reporting of child maltreatment outlined in §746.1303 of this chapter (relating to What must orientation for employees at my child-care center include?).

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SUBCHAPTER D. PERSONNEL
DIVISION 1. CHILD-CARE CENTER DIRECTOR

26 TAC §§746.1005, 746.1011, 746.1015, 746.1017, 746.1037

STATUTORY AUTHORITY

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

The amendment and new sections affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§746.1005. If I have multiple operations, must I designate a separate director for each operation?

(a) If you have multiple operations under the same governing body, you must designate a separate director for each operation.

(b) If you have designated a single director for more than one operation, you must comply with the requirement specified in subsection (a) of this section no later than March 1, 2025.

§746.1011. Must my director be at my child-care center during all hours of operation?

(a) A director must be present a minimum of 75 percent of the program's operating hours each week or a minimum of 30 hours per week, whichever is less, to ensure the operation complies with all minimum standards, unless:

(1) The director is absent from the operation temporarily for vacation or other personal time off; or

(2) The director is engaging in professional development activities related to the role of director.

(b) If you have designated a single director for more than one operation, you must comply with the requirements specified in subsection (a) of this section no later than March 1, 2025.

§746.1015. What qualifications must the director of my child-care center licensed for 13 or more children meet?

Except as otherwise provided in this division, the director of a child-care center licensed for 13 or more children must be at least 21 years of age, have a high school diploma or its equivalent, and meet one of

the following combinations of education and experience, as defined in §746.1021 of this division [~~title~~] (relating to What constitutes experience in a licensed child-care center, or in a licensed or registered child-care home?):
Figure: 26 TAC §746.1015
[~~Figure: 26 TAC §746.1015~~]

§746.1017. What qualifications must the director of my child-care center licensed for 12 or fewer children meet?

Except as otherwise provided in this division, the director of a child-care center licensed for 12 or fewer children must be at least 21 years old, have a high school diploma or its equivalent, and meet one of the following combinations of education and experience, as defined in §746.1021 of this division [~~title~~] (relating to What constitutes experience in a licensed child-care center, or in a licensed or registered child-care home?):
Figure: 26 TAC §746.1017
[~~Figure: 26 TAC §746.1017~~]

§746.1037. May clock hours or CEUs (continuing education units) be substituted for any of the educational requirements in this division?

(a) Clock hours or CEUs may only be substituted for the required credit hours in child development and management.

(b) 50 clock hours or five CEUs may only be substituted for every three college credit hours required in child development and [~~and/or~~] management.

(c) The documentation to verify the clock hours or CEUs must be as specified in §746.1329 of this title (relating to What documentation must I provide to Licensing to verify that employees have met training requirements [~~have been met~~]?).

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

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26 TAC §746.1011

STATUTORY AUTHORITY

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

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

§746.1011. Must my director be at my child-care center during all hours of operation?

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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DIVISION 3. GENERAL RESPONSIBILITIES FOR CHILD-CARE CENTER PERSONNEL

26 TAC §746.1203, §746.1205

STATUTORY AUTHORITY

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

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

§746.1203. What additional responsibilities do my caregivers have?
In addition to the responsibilities for employees specified in this division, caregivers must:

(1) Know and comply with the minimum standards for child-care centers;

[~~(2) Know which children they are responsible for;~~]

[~~(3) Know each child's name and have information showing each child's age;~~]

(2) [~~(4)~~] Supervise children at all times, as specified in §746.1205 of this division [~~title~~] (relating to What responsibilities does a caregiver have when supervising a child or children? [~~What does Licensing mean by "supervise children at all times"?~~]);

[~~(5) Ensure the children are not out of control;~~]

(3) [~~(6)~~] Be free from activities not directly involving the teaching, care, and supervision of children, such as:

(A) Administrative and clerical duties that take the caregiver's attention away from the children;

(B) Meal preparation, except when 12 or fewer children are in care;

(C) Janitorial duties; and

(D) Personal use of electronic devices, such as cell phones, MP3 players, tablets, and video games;

(4) Provide care that is consistent with the child's habits, interests, strengths, and any special needs, including any special supervision needs or care as outlined in §746.2202 of this chapter (relating

to What are my responsibilities when planning activities for a child in care with special care needs?);

(5) [~~(7)~~] Interact with children in a positive manner;

(6) Set appropriate behavior expectations based on the child's current stage of development;

(7) [~~(8)~~] Foster developmentally appropriate independence in children through planned but flexible program activities;

(8) [~~(9)~~] Foster a cooperative rather than a competitive atmosphere;

(9) [~~(10)~~] Show appreciation of children's efforts and accomplishments; and

(10) [~~(11)~~] Ensure continuity of care for children by sharing with incoming caregivers information about each child's activities during the previous shift and any verbal or written instructions given by the parent.

§746.1205. What responsibilities does a caregiver have when supervising a child or children?

(a) The caregiver is responsible for:

(1) Knowing which children the caregiver is responsible for;

(2) Knowing how many children the caregiver is responsible for;

(3) Knowing each child's name and having information showing each child's age;

(4) Providing the level of supervision necessary to ensure each child's safety and well-being, including physical proximity and auditory or visual awareness of each child's on going activity as appropriate; and

(5) Being able to intervene when necessary to ensure each child's safety.

(b) In deciding how closely to supervise a child, the caregiver must consider:

(1) The child's chronological age;

(2) The child's current stage of development;

(3) The child's individual differences and abilities;

(4) The indoor and outdoor layout of the operation;

(5) The circumstances, hazards, and risks surrounding the child; and

(6) The child's physical, mental, emotional, and social needs.

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

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26 TAC §746.1205

STATUTORY AUTHORITY

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

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

§746.1205. What does Licensing mean by "supervise children at all times"?

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DIVISION 4. PROFESSIONAL DEVELOPMENT

26 TAC §§746.1301, 746.1309, 746.1311, 746.1317, 746.1319, 746.1323

STATUTORY AUTHORITY

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

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

§746.1301. What are the training requirements for employees, caregivers, and directors? [~~What training must I ensure that my employees, caregivers, and directors have during certain timeframes?~~]

(a) Employees [~~You must make sure that employees~~], caregivers, and directors must complete the following [~~have the~~] training requirements. [~~required in the following chart:~~]
Figure: 26 TAC §746.1301(a)
[~~Figure: 26 TAC §746.1301~~]

(b) If a caregiver or employee does not yet have a current certificate in pediatric CPR as required in (a)(4)(A) in Figure: 26 TAC

§746.1301(a), at least one caregiver or employee with a current certificate must also be on the premises with the caregiver.

§746.1309. What areas of training must the annual training for caregivers cover?

(a) The 24 clock hours of annual training must be relevant to the age of the children for whom the caregiver provides care.

(b) At least six clock hours of the annual training hours must be in one or more of the following topics:

(1) Child growth and development;

(2) Guidance and discipline;

(3) Age-appropriate curriculum; and

(4) Teacher-child interaction.

(c) At least one clock hour of the annual training hours must focus on prevention, recognition, and reporting of child maltreatment, including:

(1) Factors indicating a child is at risk for abuse or neglect;

(2) Warning signs indicating a child may be a victim of abuse or neglect;

(3) Procedures for reporting child abuse or neglect; and

(4) Community organizations that have training programs available to employees, children, and parents.

(d) If a caregiver provides care for children younger than 24 months of age, one clock hour of the annual training hours must cover the following topics:

(1) Recognizing and preventing shaken baby syndrome and abusive head trauma;

(2) Understanding and using safe sleep practices and preventing sudden infant death syndrome (SIDS); and

(3) Understanding early childhood brain development.

(e) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:

(1) Emergency preparedness;

(2) Preventing and controlling the spread of communicable diseases, including immunizations;

(3) Administering medication, if applicable, including compliance with §746.3803 of this chapter (relating to What authorization must I obtain before administering a medication to a child in my care?);

(4) Preventing and responding to emergencies due to food or an allergic reaction;

(5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; and

(6) Handling, storing, and disposing of hazardous materials including compliance with §746.3425 of this chapter (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?).

(f) The remaining annual training hours must be in one or more of the following topics:

(1) Care of children with special needs;

(2) Child health (for example, nutrition and physical activity);

(3) Safety;

(4) Risk management;

(5) Identification and care of ill children;

(6) Cultural diversity for children and families;

(7) Professional development (for example, effective communication with families and time and stress management);

(8) Topics relevant to the particular age group the caregiver is assigned (for example, caregivers assigned to an infant or toddler group should receive training on biting and toilet training);

(9) Planning developmentally appropriate learning activities;

(10) Observation and assessment;

(11) Attachment and responsive care giving; and

(12) Minimum standards and how they apply to the caregiver.

(g) No more than 19 [~~80%~~] of the 24 required annual training hours may come from self-instructional training. No more than three of those self-instructional hours may come from self-study training.

(h) The 24 clock hours of annual training are exclusive of any requirements for orientation, pre-service training, pediatric first aid and pediatric CPR training, transportation safety training, and high school child-care work-study classes.

§746.1311. What areas of training must the annual training for my child-care center director cover?

(a) The 30 clock hours of annual training must be relevant to the age of the children for whom the child-care center provides care.

(b) At least six clock hours of the annual training hours must be in one or more of the following topics:

(1) Child growth and development;

(2) Guidance and discipline;

(3) Age-appropriate curriculum;

(4) Teacher-child interaction; and

(5) Serving children with special care needs.

(c) At least one clock hour of the annual training hours must focus on prevention, recognition, and reporting of child maltreatment, including:

(1) Factors indicating a child is at risk for abuse or neglect;

(2) Warning signs indicating a child may be a victim of abuse or neglect;

(3) Procedures for reporting child abuse or neglect; and

(4) Community organizations that have training programs available to employees, children, and parents.

(d) If the center provides care for children younger than 24 months of age, one hour of the annual training hours must cover the following topics:

(1) Recognizing and preventing shaken baby syndrome and abusive head trauma;

(2) Understanding and using safe sleep practices and preventing sudden infant death syndrome (SIDS); and

(3) Understanding early childhood brain development.

(e) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:

(1) Emergency preparedness;

(2) Preventing and controlling the spread of communicable diseases, including immunizations;

(3) Administering medication, if applicable, including compliance with §746.3803 of this chapter (relating to What authorization must I obtain before administering a medication to a child in my care?);

(4) Preventing and responding to emergencies due to food or an allergic reaction;

(5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; and

(6) Handling, storing, and disposing of hazardous materials including compliance with §746.3425 of this chapter (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?).

(f) A director with:

(1) Five or fewer years of experience as a designated director of a child-care center must complete at least six clock hours of the annual training hours in management techniques, leadership, or staff supervision; or

(2) More than five years of experience as a designated director of a child-care center must complete at least three clock hours of the annual training hours in management techniques, leadership, or staff supervision.

(g) The remainder of the 30 clock hours of annual training must be selected from the training topics specified in §746.1309(f) of this division (relating to What areas of training must the annual training for caregivers cover?).

(h) The director may obtain clock hours or CEUs from the same sources as caregivers.

(i) A director may not earn training hours by presenting training to others.

(j) No more than 24 [~~80%~~] of the required 30 annual training hours may come from self-instructional training. No more than three of those self-instructional hours may come from self-study training.

§746.1317. Must the training for my caregivers and the director meet certain criteria?

(a) Training may include clock hours or CEUs provided by:

(1) A training provider registered with the Texas Early Childhood Professional Development System Training Registry, maintained by the Texas Head Start State Collaboration Office;

(2) An instructor who teaches early childhood development or another relevant course at a secondary school or institution of higher education accredited by a recognized accrediting agency;

(3) An employee of a state agency with relevant expertise;

(4) A physician, psychologist, licensed professional counselor, social worker, or registered nurse;

(5) A person who holds a generally recognized credential or possesses documented knowledge relevant to the training the person will provide;

(6) A director at your child-care center if:

(A) The director [~~who~~] has demonstrated core knowledge in child development and caregiving; [~~if:~~]

[~~(A) Providing training to the director's own staff; and~~]

(B) Your child-care center has not been on probation, suspension, emergency suspension, or revocation in the two years preceding the training or been assessed an administrative penalty in the two years preceding the training; and [~~or~~]

(C) The only caregivers receiving the training are employees of your child-care center.

(7) A person who has at least two years of experience working in child development, a child development program, early childhood education, a childhood education program, or a Head Start or Early Head Start program and:

(A) Has a current Child Development Associate (CDA) credential; or

(B) Holds at least an associate [~~associate's~~] degree in child development, early childhood education, or a related field.

(b) Training may include clock hours or CEUs obtained through self-instructional materials, if the materials were developed by a person who meets one of the qualifications in subsection (a) of this section.

(c) Instructor-led and self-instructional training, but not self-study training, must include:

(1) Specifically stated learning objectives;

(2) A curriculum, which includes experiential or applied activities;

(3) An evaluation/assessment tool to determine whether the person has obtained the information necessary to meet the stated objectives; and

(4) A certificate of successful completion from the training source.

§746.1319. Does Licensing approve training resources or trainers for training hours?

(a) [~~No.~~] We do not approve or endorse training resources or trainers for training hours; however, you must ensure you and your employees receive training that:

(1) Meets the criteria specified in §746.1317 of this title (relating to Must the training for my caregivers and the director meet certain criteria?);

(2) Is relevant to the topics specified in this division; and

(3) Provides the [~~The~~] participants with [~~receive~~] original documentation of completion, as specified in this division.

(b) If the training is provided through a block certification training, the training must allocate clock hours to each specific topic included in the training.

§746.1323. If I hire a caregiver or a director that received training at another operation, may these hours count towards the annual training requirement at my center?

Training received at another operation can be applied towards the annual training requirement, if:

(1) The caregiver or director provides documentation of training as specified in §746.1329 of this title (relating to What documentation must I provide to Licensing to verify that employees have met training requirements [~~have been met~~]?);

(2) The person obtained the training from a child-care center, a school-age or before or after-school program, or a child-care home that we license or register; and

(3) The training was obtained within two months before coming to work for your child-care center.

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DIVISION 5. SUBSTITUTES, VOLUNTEERS, AND CONTRACTORS

26 TAC §§746.1401, 746.1403, 746.1405

STATUTORY AUTHORITY

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

The amendment and new sections affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§746.1401. What minimum standards must substitutes, volunteers, or contractors [~~persons under contract with my center~~] comply with?

[~~(a) For purposes of this rule:~~]

[~~(1) Persons under contract with your center are "contractors"; and~~]

[~~(2) It does not matter if a substitute, volunteer, or contractor is paid or unpaid.~~]

(a) [~~(b)~~] Substitutes not counted in the child/caregiver ratio must comply with minimum standards that apply to employees, except as otherwise provided in this division.

(b) [~~(c)~~] Volunteers and contractors who are regularly or frequently present at the child-care center but not counted in the child/caregiver ratio must comply with minimum standards that apply to employees.

(c) [~~(d)~~] Substitutes, volunteers, and contractors who are counted in the child/caregiver ratio must comply with minimum standards that apply to employees and caregivers, except as otherwise noted in subsection (d) [~~(e)~~] of this section.

(d) [~~(e)~~] Volunteers, including parents, who only supplement the ratios for field trips and water activities do not have to comply with the minimum standards that apply to employees and caregivers, but they do have to comply with the relevant minimum standards in Subchapter E of this chapter (relating to Child/Caregiver Ratios and Group Sizes).

(e) [~~(f)~~] Substitutes, volunteers, and contractors who do not meet caregiver qualifications must never be left alone with children.

(f) Substitutes, volunteers, and contractors must comply with the training requirements in §746.1403 of this division (relating to What are the training requirements for substitutes, volunteers, and contractors?).

[~~(g) All substitutes, volunteers (except for those volunteers noted in subsection (e) of this section), and contractors must complete orientation before beginning the relevant duties.~~]

[~~(h) For substitutes, volunteers, and contractors counted in the child/caregiver ratio, the remaining 16 hours of pre-service training (the first eight hours must be completed before being counted in the child/caregiver ratio) must be completed within 90 days of beginning the relevant caregiver duties. If the person completes the pre-service training after the 90 day period, the person must cease performing any caregiver duties at the center until the person completes the pre-service training.~~]

§746.1403. What are the training requirements for substitutes, volunteers, and contractors?

(a) Substitutes, volunteers, and contractors must complete the following training requirements.
Figure: 26 TAC §746.1403(a)

(b) If the person does not complete the pre-service training within the 90-day period as specified in (a)(2)(C)(ii) in Figure: 26 TAC §746.1403(a), the person must cease performing any caregiver duties at the center until the person completes the pre-service training.

(c) If a substitute, volunteer, or contractor who is counted in the child to caregiver ratio does not yet have a current certificate in pediatric CPR, as required in (a)(4)(A) in Figure: 26 TAC §746.1403(a), at least one caregiver or employee with a current certificate must also be on the premises with the substitute, volunteer, or contractor.

§746.1405. When is a substitute, volunteer, or contractor exempt from the pre-service training?

A substitute, volunteer, or contractor is exempt from the pre-service training requirements if the substitute, volunteer, or contractor:

(1) Has at least two years of documented prior experience in a regulated child-care center; or

(2) Provides documentation of at least 24 clock hours of training in the areas specified in §746.1305 of this chapter (relating to What must be covered in pre-service training for caregivers?) at another regulated child-care center.

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

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SUBCHAPTER E. CHILD/CAREGIVER RATIOS AND GROUP SIZES
DIVISION 2. CLASSROOM RATIOS AND GROUP SIZES FOR CENTERS LICENSED TO CARE FOR 13 OR MORE CHILDREN

26 TAC §746.1605

STATUTORY AUTHORITY

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

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

§746.1605. When may [~~May~~] I combine infants with children 18 months and older?

You may combine infants with children 18 months and older in the following situations.

(1) [~~Yes.~~] If you have 13 or more children in care, you may combine infants with older children as long as the oldest child in the group is not more than 18 months older than the youngest child. For example, if the youngest child in a group is eight months old, the oldest child in the group must not be more than 26 months old; or[~~.~~]

(2) If you have 12 or fewer children in care you may combine infants with older children without regard to age, as described in §746.1703 of this subchapter (relating to If I have 12 or fewer children in care, may I combine infants with children 18 months and older?).

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SUBCHAPTER F. DEVELOPMENTAL ACTIVITIES AND ACTIVITY PLAN

26 TAC §746.2201, §746.2202

STATUTORY AUTHORITY

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

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

§746.2201. What must [~~Must~~] caregivers consider when providing [~~provide~~] planned activities for the children in their care?

[~~(a)~~] [~~Yes.~~] Caregivers must provide planned activities designed to meet the individual needs and developmental level of each child.

[~~(b) You must ensure that children who need special care due to disabling or limiting conditions receive the care recommended by a health-care professional or qualified professionals affiliated with the local school district or early childhood intervention program. These basic care requirements must be documented and on file for review at the child-care center during operating hours. Activities must integrate all children with or without special care needs. You may need to adapt equipment and vary methods to ensure that you care for children with special needs in a natural environment.~~]

§746.2202. What are my responsibilities when planning activities for a child in care with special care needs?

You must:

(1) Provide a child with special care needs with the accommodations recommended by:

(A) A health-care professional; or

(B) A qualified professional affiliated with the local school district or early childhood intervention program;

(2) Utilize as recommended any adaptive equipment that has been provided to the center for a child's use;

(3) Ensure that a child who receives early intervention services or special education services can receive those services from a qualified service provider at your operation, with parental request and approval;

(4) Ensure that activities integrate children with and without special care needs; and

(5) Ensure that caregivers adapt equipment and procedures and vary methods as necessary to ensure that you care for a child with special needs in a natural environment.

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

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SUBCHAPTER H. BASIC CARE REQUIREMENTS FOR INFANTS

26 TAC §§746.2403, 746.2405, 746.2415, 746.2424, 746.2426, 746.2427

STATUTORY AUTHORITY

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

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

§746.2403. How must I arrange the infant care area?

The room arrangement of the infant care area must:

(1) Make it possible for caregivers to hear all infants and see all infants at a glance, and be able to intervene when necessary;

(2) Include safe, open floor space for floor time play;

(3) Separate infants from children more than 18 months older than the youngest child in the group, except when 12 or fewer children are in care, as required by §746.1605 of this chapter (relating to May I combine infants with children 18 months and older?);

(4) Have cribs far enough apart so that one infant may not reach into another crib;

(5) Provide caregivers with enough space to walk and work between cribs, cots, and mats; and

(6) Ensure older children do not use the infant area as a passageway to other areas of the building.

§746.2405. What furnishings and equipment must I have in the infant care area?

Furnishings and equipment for infants must include at least the following:

(1) An adult-sized rocker or chair;

(2) An individual crib to sleep in for each non-walking infant younger than 12 months of age;

(3) An individual crib, cot, bed, or mat that is waterproof or washable for each:

(A) Walking [~~walking~~] infant; and

(B) Non-walking infant 12 months of age or older;

(4) A hand-washing sink in the diaper-changing area, as specified in §746.4403 of this title (relating to Must I have a hand-washing sink in the diaper-changing area?); and

(5) A sufficient number of toys to keep the infants engaged in activities.

§746.2415. What specific types of equipment am I prohibited from using with infants?

(a) You may not use the following equipment for infants, which has been identified as unsafe for infants by the Consumer Product Safety Commission and the American Academy of Pediatrics:

(1) Baby walkers, which are devices that allow an infant to sit inside a walker equipped with rollers or wheels and move across the floor;

(2) Baby doorway jumpers, which are devices that allow an infant to bounce while supported in a seat by an elastic "bungee cord" suspended from a doorway;

(3) Accordion safety gates;

(4) Toys that are not large enough to prevent swallowing or choking; or

(5) Bean bags, waterbeds, and foam pads for use as sleeping equipment.

(b) Except for a tight-fitting [~~tight fitting~~] sheet and as provided in subsection (c), the crib or play yard must be bare for an infant younger than 12 months of age.

(c) A crib mattress cover may also be used to protect against wetness, but the cover must:

(1) Be designed specifically for the size and type of crib and crib mattress that it is being used with;

(2) Be tight fitting and thin; and

(3) Not be designed to make the sleep surface softer.

§746.2424. Where must an infant sleep?

An infant must sleep in a designated crib, cot, bed, or mat as required by §746.2405 of this subchapter (relating to What furnishings and equipment must I have in the infant care area?).

§746.2426. May I allow infants to sleep in a restrictive device?

(a) If you do not have a Sleep Exception Form that includes a signed statement from a health-care professional stating that the child sleeping in a restrictive device is medically necessary:

(1) You may not allow an infant to sleep in a restrictive device; and[~~.~~]

(2) If an infant falls asleep in a restrictive device, you must remove the infant [~~must be removed~~] from the device and place the infant [~~placed~~] in a crib as soon as possible.

(b) You may allow an infant to [~~Infants may~~] sleep in a restrictive device if you have a completed Sleep Exception Form that includes a signed statement from a health-care professional stating that the child sleeping in a restrictive device is medically necessary.

§746.2427. How must I position an infant for sleep? [~~Are infants required to sleep on their backs?~~]

(a) You must place an infant [~~Infants not yet able to turn over on their own must be placed~~] in a face-up sleeping position in the infant's own crib, unless you have a completed Sleep Exception Form that includes a signed statement from a health-care professional stating that a different sleeping position for the child is medically necessary.

(b) An infant who is developmentally able to roll from back to stomach and stomach to back may do so independently after you have placed the infant in a face-up position for sleep.

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

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SUBCHAPTER I. BASIC CARE REQUIREMENTS FOR TODDLERS

26 TAC §746.2503

STATUTORY AUTHORITY

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

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

§746.2503. How must I arrange the toddler care area?

The toddler care area must include:

(1) Spaces in the room that allow both individual and group time; and

(2) A play environment that allows the caregiver to supervise all children as defined in §746.1205 of this chapter [~~title~~] (relating to What responsibilities does a caregiver have when supervising a child or children? [~~What does Licensing mean by "supervise children at all times"?~~]).

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SUBCHAPTER J. BASIC CARE REQUIREMENTS FOR PRE-KINDERGARTEN AGE CHILDREN

26 TAC §746.2601

STATUTORY AUTHORITY

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

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

§746.2601. What are the basic care requirements for pre-kindergarten age children?

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

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26 TAC §746.2601

STATUTORY AUTHORITY

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

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

§746.2601. What are the basic requirements for pre-kindergarten age children?

Basic care for pre-kindergarten age children must include:

(1) Routines such as diapering or toileting, eating, napping or resting, indoor activity times, and outdoor activity times;

(2) Individual attention given to each pre-kindergarten age child; and

(3) Interactions that encourage children to communicate and express feelings in appropriate ways.

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

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SUBCHAPTER K. BASIC CARE REQUIREMENTS FOR SCHOOL-AGE CHILDREN

26 TAC §746.2703

STATUTORY AUTHORITY

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

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

§746.2703. What physical space requirements must I provide for the school-age care area?

The school-age care area must include:

(1) Space to set up interest centers or focused play areas during the activity, such as arts and crafts; music and movement; blocks and construction; drama and theater; math and reasoning activities; science and nature; language and reading activities, such as books, story tapes and language games, stories read or told on a weekly basis, and cultural awareness, which are:

(A) Organized for independent use by children; and

(B) Arranged so the caregiver can supervise the children according to §746.1205 of this chapter [~~title~~] (relating to What responsibilities does a caregiver have when supervising a child or children? [~~What does Licensing mean by "supervise children at all times"?~~]);

(2) Space where children can have individual activities yet be supervised; and

(3) Space for quiet time to do homework.

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

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SUBCHAPTER L. DISCIPLINE AND GUIDANCE

26 TAC §746.2805

STATUTORY AUTHORITY

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

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

§746.2805. What types of discipline and guidance or punishment are prohibited?

There must be no harsh, cruel, or unusual treatment of any child. The following types of discipline and guidance are prohibited:

(1) Corporal punishment or threats of corporal punishment;

(2) Punishment associated with food, naps, or toilet training;

(3) Grabbing or pulling a child;

[~~(3) Pinching, shaking, or biting a child;~~]

[~~(4) Hitting a child with a hand or instrument;~~]

(4) [~~(5)~~] Putting anything in or on a child's mouth;

(5) [~~(6)~~] Humiliating, ridiculing, rejecting, or yelling at a child;

(6) [~~(7)~~] Subjecting a child to harsh, abusive, or profane language;

(7) [~~(8)~~] Placing a child in a locked or dark room, bathroom, or closet;

(8) Placing a child in a restrictive device for time out;

(9) Withholding active play or keeping a child inside as a consequence for behavior, unless the child is exhibiting behavior during active play that requires a brief supervised separation or time out that is consistent with §746.2803(4)(D) of this subchapter (relating to What methods of discipline and guidance may a caregiver use?); and

(10) Requiring a child to remain silent or inactive for inappropriately long periods of time for the child's age[~~, including requiring a child to remain in a restrictive device~~].

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

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SUBCHAPTER M. NAPTIME

26 TAC §746.2909

STATUTORY AUTHORITY

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

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

§746.2909. Must I arrange the napping equipment in a specific manner?

Napping equipment must:

(1) Not block entrances or exits to the area;

(2) Not be set up during other activities or left in place to interfere with children's activity space;

(3) Be arranged to provide a sufficient walk and work space for caregivers between each cot and mat;

(4) Be arranged so that each child and caregiver has access to a walkway without having to walk on or over the cots or mats of other children; and

(5) Be arranged so the caregiver can adequately supervise all children in the group, as specified in §746.1205 of this chapter [~~title~~] (relating to What responsibilities does a caregiver have when supervising a child or children? [~~What does Licensing mean by "supervise children at all times"?~~]).

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 P. NIGHTTIME CARE

26 TAC §746.3205

STATUTORY AUTHORITY

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

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

§746.3205. Must caregivers stay awake while supervising children during nighttime care?

Yes. Caregivers supervising children during nighttime care must be awake and supervising the children at all times, as specified in §746.1205 of this chapter [~~title~~] (relating to What responsibilities does a caregiver have when supervising a child or children? [~~What does Licensing mean by "supervise children at all times"?~~]).

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 Q. NUTRITION AND FOOD SERVICE

26 TAC §746.3301

STATUTORY AUTHORITY

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

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

§746.3301. What are the basic requirements for meal and snack times?

(a) You must serve all children regular meals and morning and afternoon snacks as specified in this subchapter.

(b) The meals and snacks must follow the meal patterns established by the U.S. Department of Agriculture (USDA) Child and Adult Care Food Program (CACFP) that is administered by the Texas Department of Agriculture. You must follow these patterns regardless of whether you are participating in the program for reimbursement.

(c) If you serve breakfast, you do not have to serve a morning snack.

(d) A child must not go more than three hours without a meal or snack being offered[,] unless the child is sleeping.

(e) You must serve enough food to allow [~~children~~] a child to have second servings from the vegetable, fruit, grain, and milk groups if the child requests it.

(f) You must ensure a supply of clean, sanitary drinking water:

(1) Is [~~is~~] always available to each child at every snack, mealtime, and during and after active play; and

(2) Is [~~is~~] served in a safe and sanitary manner.

(g) You must not serve beverages with added sugars, such as carbonated beverages, fruit punch, or sweetened milk except for a special occasion such as a holiday or birthday celebration, unless otherwise allowed by the CACFP.

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

(i) You must not serve a child a food identified on the child's food allergy emergency plan, as specified in §746.3817 of this chapter (relating to What is a food allergy emergency plan?).

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

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SUBCHAPTER R. HEALTH PRACTICES
DIVISION 3. ILLNESS AND INJURY

26 TAC §746.3601

STATUTORY AUTHORITY

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

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

§746.3601. What type of illness would prohibit a child from attending the child-care center?

Unless you are licensed to provide get-well care, you must not allow an ill child to attend your child-care center if one or more of the following exists:

(1) The illness prevents the child from participating comfortably in child-care center activities including outdoor play;

(2) The illness results in a greater need for care than caregivers can provide without compromising the health, safety, and supervision of the other children in care;

(3) The child has one of the following (unless a medical evaluation by a health-care professional indicates that you can include the child in the child-care center's activities):

(A) An oral temperature above 101 degrees that is accompanied by behavior changes or other signs or symptoms of illness;

(B) A tympanic (ear) temperature above 100 degrees that is accompanied by behavior changes or other signs or symptoms of illness. Tympanic thermometers are not recommended for children under six months old;

(C) An axillary (armpit) temperature above 100 degrees that is accompanied by behavior changes or other signs or symptoms of illness; [~~or~~]

(D) An infrared temporal (forehead) temperature above 100 degrees that is accompanied by behavior changes or other signs or symptoms of illness; or

(E) [~~(D)~~] Symptoms and signs of possible severe illness such as lethargy, abnormal breathing, uncontrolled diarrhea, two or more vomiting episodes in 24 hours, rash with fever, mouth sores with drooling, behavior changes, or other signs that the child may be severely ill; or

(4) A health-care professional has diagnosed the child with a communicable disease, and the child does not have medical documentation to indicate that the child is no longer contagious.

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 S. SAFETY PRACTICES
DIVISION 1. SAFETY PRECAUTIONS

26 TAC §746.3701

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and

§531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of Texas Human Resources Code.

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

§746.3701. What safety precautions must I take to protect children in my child-care center?

All areas accessible to a child must be free from hazards including, but not limited to, the following:

(1) Electrical outlets accessible to a child younger than five years must have childproof covers or safety outlets;

(2) 220-volt electrical connections within a child's reach must be covered with a screen or guard;

(3) Air conditioners, electric fans, and heaters must be mounted out of all children's reach or have safeguards that keep any child from being injured;

(4) Glass in sliding doors must be clearly marked with decals or other materials placed at children's eye level;

(5) Play materials and equipment must be safe and free from sharp or rough edges and toxic paints;

(6) Poisonous or potentially harmful plants must be inaccessible to all children;

(7) Bottle warmers must be inaccessible to all children and used only according to manufacturer instructions;

(8) [~~(7)~~] All storage chests, boxes, trunks, or similar items with hinged lids must be equipped with a lid support designed to hold the lid open in any position, be equipped with ventilation holes, and must not have a latch that might close and trap a child inside;

(9) [~~(8)~~] All bodies of water such as pools, hot tubs, ponds, creeks, birdbaths, fountains, buckets, and rain barrels must be inaccessible to all children; and

(10) [~~(9)~~] All televisions must be anchored, so they cannot tip over. A television may be anchored to a rolling cart, as long as it is anchored in a way that the cart will not tip over.

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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DIVISION 4. FIRST-AID KITS

26 TAC §746.4003

STATUTORY AUTHORITY

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

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

§746.4003. What items must each first-aid kit contain?

(a) Each first-aid kit must contain the following supplies:

(1) A guide to first aid and emergency care;

(2) Adhesive tape;

(3) Antiseptic solution or wipes;

[~~(4) Cotton balls;~~]

(4) [~~(5)~~] Adhesive [~~Multi-size adhesive~~] bandages;

(5) [~~(6)~~] Scissors;

(6) [~~(7)~~] Sterile gauze pads;

(7) [~~(8)~~] Thermometer, preferably non-glass;

(8) [~~(9)~~] Tweezers; and

(9) [~~(10)~~] Waterproof, disposable gloves.

(b) The first-aid supplies must not have expired.

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 T. PHYSICAL FACILITIES
DIVISION 1. INDOOR SPACE REQUIREMENTS

26 TAC §746.4217

STATUTORY AUTHORITY

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

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

§746.4217. May I care for children above or below ground level?

To care for children on any level above or below ground level, you must: [~~You must not care for children on any level above or below ground level without.~~]

(1) Obtain written approval from the state or local fire authority; and [~~marshal~~]

(2) Follow any restrictions issued by the state or local fire authority, including any age limits placed on the approval.

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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DIVISION 3. TOILETS AND SINKS

26 TAC §746.4403

STATUTORY AUTHORITY

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

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

§746.4403. Must I have a hand-washing sink in the diaper-changing area?

(a) You must have one hand-washing sink in each diaper-changing area, placed so that the caregiver using it can maintain supervision of the children in the group as specified in §746.1205 of this chapter [~~title~~] (relating to What responsibilities does a caregiver have when supervising a child or children? [~~What does Licensing mean by "supervise children at all times"?~~]).

(b) If your child-care center was licensed as a day care center, group day care home or drop-in child-care center before September 1, 2003, and you are unable to comply with subsection (a) of this section, you must submit to us and follow a plan for each diaper-changing area that ensures children are supervised at all times and caregivers and children are washing hands as specified in this chapter.

(c) A child-care center licensed before September 1, 2003, must comply with the requirements specified in subsection (a) of this section if the permit issued prior to September 1, 2003, is no longer valid.

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 U. INDOOR AND OUTDOOR ACTIVE PLAY SPACE AND EQUIPMENT DIVISION 6. SOFT CONTAINED PLAY EQUIPMENT

26 TAC §746.4951

STATUTORY AUTHORITY

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

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

§746.4951. What is soft contained play equipment?

Soft contained play equipment is a play structure that:

(1) Is fully enclosed with pliable material such as net, plastic, or fabric;

(2) The user enters to access one or more play components; and

(3) Allows caregivers to supervise children as specified in §746.1205 of this chapter [~~title~~] (relating to What responsibilities does a caregiver have when supervising a child or children? [~~What does Licensing mean by "supervise children at all times"?~~]).

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 X. TRANSPORTATION

26 TAC §746.5607, §746.5625

STATUTORY AUTHORITY

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

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

§746.5607. What child passenger safety seat system must I use when I transport children?

(a) You must use a child passenger safety seat system to restrain a child when transporting the child. The restraint system:

(1) Must [~~must~~] meet the federal standards for crash-tested systems as set by the National Highway Traffic Safety Administration; and

(2) Must [~~must~~] be properly secured in the vehicle according to manufacturer's instructions.

(b) You must use child safety seats and child booster seats that have not expired or been damaged or involved in an accident.

(c) [~~(b)~~] You must secure each child in an infant only rear-facing child safety seat, rear-facing convertible child safety seat, forward-facing child safety seat, child booster seat, safety vest, harness, or a safety belt, as appropriate to the child's age, height, and weight according to manufacturer's instructions for all vehicles specified in subsection (e) [~~(d)~~] of this section, unless otherwise noted in this subchapter.

(d) [~~(c)~~] A child 12 years old or younger must not ride in the front seat of a vehicle.

(e) [~~(d)~~] The following safety restraint devices for a child must be used when the vehicle is on and during all times when the vehicle is in motion.[:]
Figure: 26 TAC §746.5607(e)
[~~Figure: 26 TAC §746.5607(d)~~]

§746.5625. When and how must I install and use an electronic child safety alarm in a vehicle?

(a) You must ensure that a vehicle purchased or leased on or after December 31, 2013, is equipped with an electronic child safety alarm if:

(1) The vehicle is designed to seat eight or more persons; and

(2) Your operation uses the vehicle to transport children in care.

(b) You are responsible for ensuring that the alarm is installed and maintained according to the manufacturer's instructions.

(c) The alarm must be used at all times whenever a vehicle describe in subsection (a) of this section is used to transport a child in care.

(d) The driver of the vehicle or a designated employee must complete the following tasks before disabling the alarm from the rear of the vehicle:

(1) Verify that all children have been accounted for; and

(2) Conduct a physical walk-through and visual check of the vehicle, including the seats, seat rows, and interior, to ensure no children remain in the vehicle.

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CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§747.121, 747.123, 747.207, 747.303, 747.305, 747.307, 747.403, 747.605, 747.701, 747.801, 747.901, 747.1107, 747.1129, 747.1131, 747.1305, 747.1309, 747.1501, 747.2101, 747.2305, 747.2315, 747.2323, 747.2326, 747.2327, 747.2403, 747.2603, 747.2705, 747.3101, 747.3303, 747.3401, 747.3501, 747.3803, 747.4015, 747.4307, and 747.5407; new §§747.1503, 747.2107, 747.2324, and 747.2501; and the repeal of §747.1503 and §747.2501 in Title 26, Texas Administrative Code, Chapter 747, Minimum Standards for Child-Care Homes.

BACKGROUND AND PURPOSE

This proposal is necessary to comply with Texas Human Resources Code (HRC) §42.042(b), which requires Child Care Regulation (CCR) to conduct a comprehensive review of minimum standards at least once every six years.

The purpose of the comprehensive review is to (1) identify any minimum standards that need clarification and amend them; (2) identify any minimum standards that may not have the intended outcome and amend or repeal them; (3) ensure that minimum standards are consistent with current research, best practices, and other guidelines; and (4) ensure regulatory requirements support the availability and affordability of child day care without compromising children's overall health and safety.

The proposed changes are the result of recommendations based on input from CCR staff and stakeholders, including child-care providers, caregivers, advocates, parents, and the public, compiled during the comprehensive review of all minimum standards located in Chapter 747.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §747.121 corrects the title of the department and the agency that regulates child care homes.

The proposed amendment to §747.123 (1) adds definitions for "activity plan," "hazardous materials," and "weather permitting"; (2) updates the definition for "age-appropriate" to include the developmental age of the child; (3) updates the definition of "certified lifeguard" to require the training certificate be current and

relevant to the type of water activity in which children will engage; (4) updates the definition of "corporal punishment" to include hitting a child with a hand or instrument, pinching, shaking, and biting a child; (5) updates the definition of "sanitize" to (A) add information about disinfecting products, (B) remove the allowance for EPA-registered sanitizing products or disinfecting solutions that do not include labelling instructions for sanitizing (except for bleach), (C) clarify that soaking in or spraying on a bleach solution is a separate step from rinsing items children are likely to mouth, and (D) renumber the steps for sanitizing with bleach accordingly; (6) updates the definition of "special care needs" to include comprehension, emotional regulation, and a limitation due to an injury, illness, or allergy; (7) changes the term "state or local fire marshal" to "state or local fire authority" to be consistent with rules in other CCR chapters; and (8) updates the numbering of the definitions accordingly.

The proposed amendment to §747.207 (1) updates requirements for reporting suspected abuse, neglect, or exploitation, to clarify the primary caregiver may not (A) delegate the responsibility to make a report, or (B) require an employee or household member to seek approval to file a report or notify the primary caregiver that a report was made; and (2) adds language to clarify that ensuring the confidentiality of background check information includes not disclosing background check information to unauthorized persons.

The proposed amendment to §747.303 adds language to clarify that a child-care home must report to CCR the occurrence of a non-routine situation that places, or may place, a child at risk for injury or harm.

The proposed amendment to §747.305 adds language to clarify that a child-care home must report to the child's parents when the child has been involved in a non-routine situation that placed, or may have placed, a child at risk for injury or harm.

The proposed amendment to §747.307 updates the title of a rule reference.

The proposed amendment to §747.403 adds the telephone number for poison control.

The proposed amendment to §747.605 (1) updates the special care needs statement in a child's admission information to require the inclusion of any limitations or restrictions on the child's activities and special care the child requires, including (A) any reasonable accommodations or modifications, (B) any adaptive equipment provided for the child, and (C) symptoms or indications of potential complications related to a physical, cognitive, or mental condition that may warrant prevention or intervention while the child is in care; (2) deletes the previous special care needs statement requirements regarding existing illness, previous serious illness and injuries, and hospitalizations during the past twelve months; and (3) moves the requirement to include allergies as part of the special care needs statement to the section of the rule that requires the operation to obtain a completed food allergy emergency plan.

The proposed amendment to §747.701 adds language to clarify that a child-care home must keep a written record of any non-routine situation that placed, or may have placed, a child at risk for injury or harm on the Licensing Incident/Illness Report Form 7239 or on another form with the same information.

The proposed amendment to §747.801 updates the title of a rule reference.

The proposed amendment to §747.901 adds a requirement that the operation also maintain documentation verifying assistant caregivers and substitute caregivers have met training requirements to the requirement that a child-care home maintain a record of training hours in its personnel records.

The proposed amendment to §747.1107 (1) updates and reorganizes language and punctuation for better readability and understanding; and (2) updates a reference.

The proposed amendment to §747.1129 updates a reference.

The proposed amendment to §747.1131 updates a reference.

The proposed amendment to §747.1305 (1) separates the allowable self-instructional hours for an assistant caregiver or a substitute caregiver in a registered child-care home from an assistant caregiver or a substitute caregiver in a licensed child-care home; (2) converts from a percentage to a whole number the amount of annual training hours for an assistant caregiver or substitute caregiver that may be self-instructional; and (3) updates the numbering of subsections accordingly.

The proposed amendment to §747.1309 converts from a percentage to a whole number the amount of annual training hours for the primary caregiver that may be self-instructional.

The proposed amendment to §747.1501 (1) deletes requirements for caregivers to know which children they are responsible for, know each child's name, and have information showing each child's age, as those requirements are now included in proposed new §747.1503; (2) updates references; (3) deletes the requirement for caregivers to ensure children are not out of control and replaces it with a requirement that caregivers set appropriate behavior expectations based on a child's current stage of development; (4) adds a requirement that caregivers provide care that is consistent with a child's habits, interests, strengths, and any special needs; and (5) updates the numbering of paragraphs accordingly.

Proposed new §747.1503 outlines the responsibilities a caregiver has when supervising children. The proposed rule (1) incorporates two requirements deleted from proposed amended §747.1501; (2) incorporates requirements from proposed repealed §747.1503; (3) adds a requirement that caregivers know how many children they are responsible for; (4) adds requirements for caregivers to take into consideration when supervising a child (A) the child's current stage of development, and (B) the child's physical, mental, emotional, and social needs; and (5) updates the requirement in proposed repealed §747.1503 that a caregiver supervising a child take into consideration the neighborhood circumstances, hazards, and risks to require the caregiver to take into consideration the circumstances, hazards, and risks surrounding the child.

The proposed repeal of §747.1503 deletes the rule as no longer necessary because the content of the rule has been updated and re-proposed in proposed new §747.1503.

The proposed amendment to §747.2101 (1) updates the rule title for better readability and understanding; (2) deletes subsection (b) as no longer necessary because the content has been updated and re-proposed in proposed new §747.2107; and (3) removes the subsection numbers, since they are no longer necessary.

Proposed new §747.2107 outlines the child-care home's responsibilities when planning activities for a child in care with special care needs. The proposed new rule (1) incorporates re-

quirements from deleted subsection (b) of proposed amended §747.2101, with the exception of the requirement to maintain documentation of basic care requirements on file at the child-care home, because that component is required elsewhere in Chapter 747; (2) clarifies that the child-care home must provide a child with special care needs the accommodations recommended by a qualified professional; (3) adds a requirement that a child-care home utilize as recommended any adaptive equipment that has been provided for a child's use; (4) adds a requirement that a child-care home ensure that a child who receives specialized services for the child's disability can receive those services from a qualified service provider at the home, with parental request and approval; and (5) adds a requirement that caregivers adapt procedures as necessary to care for a child with special needs in a natural environment.

The proposed amendment to §747.2305 adds language to clarify that a child-care home is required to have an individual crib, cot, bed, or mat for each walking and non-walking infant 12 months of age or older.

The proposed amendment to §747.2315 (1) updates "tight fitting" to "tight-fitting"; and (2) adds a play yard as sleeping equipment that must be bare, except for a tight-fitting sheet, for an infant younger than 12 months of age.

The proposed amendment to §747.2323 (1) updates the rule title for better readability and understanding; (2) adds language to clarify that a caregiver must supervise an infant's nap period to ensure auditory and visual awareness of the infant in accordance with §747.1503; and (3) updates a reference.

Proposed new §747.2324 requires an infant to sleep in a designated crib, cot, bed, or mat, and in an area where the caregiver has auditory or visual awareness of the infant.

The proposed amendment to §747.2326 (1) reorganizes the rule; (2) updates language for better readability and understanding; and (3) adds language to clarify that an infant may not sleep in a restrictive device unless the operation has a Sleep Exception Form with a signed statement from a health-care professional.

The proposed amendment to §747.2327 (1) updates the rule title for better readability and understanding; (2) adds a requirement that a caregiver place an infant in a face-up sleeping position, regardless of whether the infant can turn over independently, unless there is a completed Sleep Exception form on file for the infant; (3) adds language to clarify that an infant who is developmentally able to roll from back to stomach and stomach to back may do so independently after the caregiver has placed the infant in a face-up position for sleep; and (4) reorganizes the rule into subsections.

The proposed amendment to §747.2403 updates a reference.

Proposed new §747.2501 outlines the basic care requirements for pre-kindergarten age children. The rule (1) incorporates the requirements from proposed repealed §747.2501; and (2) adds a requirement that basic care include routines such as diapering or toileting, eating, napping resting, indoor activity times, and outdoor activity times.

The proposed repeal of §747.2501 deletes the rule as no longer necessary because the content of the rule has been updated and re-proposed in new §747.2501.

The proposed amendment to §747.2603 updates a reference.

The proposed amendment to §747.2705 (1) expands the list of prohibited discipline and guidance measures to include grabbing or pulling on a child and placing a child in a restrictive device for time out; (2) deletes from the list pinching, shaking, or biting a child, and hitting a child with a hand or instrument because those requirements have been incorporated into the definition of corporal punishment in the proposed amendment to §747.123; (3) deletes a reference to requiring a child to remain in a restrictive device in the requirement that prohibits a child to remain silent or inactive for inappropriately long period of time, because that content has been clarified and added as a separate type of prohibited discipline and guidance; and (4) updates the numbering of the paragraphs accordingly.

The proposed amendment to §747.3101 (1) updates punctuation; (2) adds language to clarify that a child-care home must serve enough food to allow a child to have a second serving from the vegetable, fruit, grain, and milk groups if the child requests it; (3) adds a requirement that the supply of drinking water be clean and sanitary and available during active play and reorganizes the subsection into two paragraphs for better readability and understanding; and (4) clarifies that the child-care home may not serve beverages with added sugars unless otherwise allowed by the Child and Adult Care Food Program.

The proposed amendment to §747.3303 updates a reference.

The proposed amendment to §747.3401 (1) adds an allowance for a child-care home to use an infrared temporal (forehead) thermometer to assess a child's temperature and provides guidelines for a temperature reading indicative of illness; and (2) updates the numbering of the subparagraphs accordingly.

The proposed amendment to §747.3501 (1) adds bottle warmers to the list of hazards that must be inaccessible to children and requires that they be used only according to manufacturer instructions; and (2) updates the numbering of the paragraphs accordingly.

The proposed amendment to §747.3803 (1) deletes the requirement for cotton balls in a first-aid kit; (2) amends the requirement for adhesive bandages in a first-aid kit so that they do not have to be multi-sized; and (3) updates the numbering of the paragraphs accordingly.

The proposed amendment to §747.4015(1) adds a requirement that child-care home follow any restrictions issued by the state or local fire authority when seeking approval to care for children above or below ground level; and (2) reorganizes the rule into paragraphs.

The proposed amendment to §747.4307 (1) clarifies that a landline telephone must have a listed telephone number; (2) adds a requirement that a home that uses cellular phone service ensure all caregivers and adult household members know the address of the home to direct emergency personnel to the child-care home when dialing 911 from the home; (3) adds a requirement that the primary caregiver post the telephone number and update the posting if the telephone number changes; and (4) divides the rule into subsections accordingly.

The proposed amendment to §747.5407 (1) reorganizes the rule for better readability and understanding; (2) adds a requirement that a child-care home may only use child safety seats and child booster seats that have not expired or been damaged or involved in an accident; (3) updates the numbering of the subsections accordingly; and (4) updates the safety restraint device requirements to be consistent with current recommendations from the Texas Department of Transportation and the American Academy of Pediatrics.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

(5) the proposed rules will create new rules;

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

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

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

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

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

Chapter 2006 of Texas Government Code defines a small business as one that is for-profit with fewer than 100 employees. A micro-business is one that is for-profit with fewer than 20 employees. Based on data obtained from the 2020 CCR Data Book, there are approximately 4,625 Licensed and Registered Child-Care Homes required to comply with the rules. These homes are limited to caring for a maximum of 12 children. CCR assumes that all Licensed and Registered Child-Care Homes (4,914 homes) are for-profit homes with less than 20 employees and qualify as small businesses and micro-businesses.

The projected economic impact on small businesses and micro-businesses is limited to proposed new §747.5407.

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

Section 747.5407 requires a child-care home to use only child safety seats and child booster seats that have not expired or been damaged or involved in an accident. While this requirement was previously a best practice suggestion and may be common practice among child-care homes currently, the proposed rule may require some child-care homes to purchase new child safety seats and child booster seats to comply with the proposed rule. In April 2021, Consumer Reports indicated the average child safety seat cost ranges from $40 to $450, depending on the model of the child safety seat. In the same assessment, Consumer Reports indicated a child booster seat cost ranges from $11 to $320. Although HHSC can use this information to ascertain a general cost range to replace child safety seats and child booster seats, HHSC is unable to determine which child-care homes will need to replace child safety seats or child booster seats, the model or type of safety seat a child-care home will purchase, or the number of seats a child-care home may need to purchase. HHSC is also unable to determine how many child-care homes to exclude from the economic impact because they use seats provided by children's parents. As a result, HHSC does not have enough information to determine economic costs for persons required to comply with the rule as proposed.

HHSC determined that alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of children attending child-care operations in Texas.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be regulatory requirements that reflect current research, best practices and guidelines around child safety and well-being, rules that clarify provider requirements, and rules that comply with state law.

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Aimee Belden by email at Aimee.Belden@hhs.texas.gov.

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 21R159" in the subject line.

SUBCHAPTER A. PURPOSE, SCOPE, AND DEFINITIONS

DIVISION 3. DEFINITIONS

26 TAC §747.121, §747.123

STATUTORY AUTHORITY

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

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

§747.121. What do certain pronouns mean when used in this chapter?

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

(1) I, my, you, and your--A permit holder who is the primary caregiver in a licensed or registered child-care home, unless otherwise stated.

(2) We, us, our, and Licensing--The Child Care Regulation department of the Texas Health and Human Services Commission (HHSC) [~~The Licensing Division of the Texas Department of Family and Protective Services (DFPS)~~].

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

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

(1) Activity plan--A written plan that outlines the daily routine and activities in which a child will engage while in your care. The plan is designed to meet the child's cognitive, social, language, emotional, and physical developmental strengths and needs.

(2) [~~(1)~~] Activity space--An area or room used for children's activities.

(3) [~~(2)~~] Administrative and clerical duties--Duties that involve the operation of a child-care home, such as bookkeeping, enrolling children, answering the telephone, and collecting fees.

(4) [~~(3)~~] Admission--The process of enrolling a child in a child-care home. The date of admission is the first day the child is physically present in the home.

(5) [~~(4)~~] Adult--A person 18 years old and older.

(6) [~~(5)~~] After-school hours--Hours before and after school, and days when school is not in session, such as school holidays, summer vacations, and teacher in-service days.

(7) [~~(6)~~] Age-appropriate--Activities, equipment, materials, curriculum, and environment that are developmentally consistent with the developmental or chronological age of the child being served.

(8) [~~(7)~~] Attendance--When referring to a child's attendance, the physical presence of a child at the child-care home on any given day or at any given time, as distinct from the child's enrollment in the child-care home.

(9) [~~(8)~~] Bouncer seat--A stationary seat designed to provide gentle rocking or bouncing motion by an infant's movement, or by battery-operated movement. This type of equipment is designed for an infant's use from birth until the child can sit up unassisted.

(10) [~~(9)~~] Caregiver--A person who is counted in the child to caregiver ratio, whose duties include the supervision, guidance, and protection of a child. As used in this chapter, a caregiver must meet the minimum education, work experience, and training qualifications required under Subchapter D of this chapter (relating to Personnel).

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

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

(13) [~~(12)~~] CEUs--Continuing education units. A standard unit of measure for adult education and training activities. One CEU equals 10 clock hours of participation in an organized, continuing-education experience, under responsible, qualified direction and instruction. Although a person may obtain a CEU in many of the same settings as clock hours, the CEU provider must meet the criteria established by the International Association for Continuing Education and Training to be able to offer the CEU.

(14) [~~(13)~~] Child--An infant, a toddler, a pre-kindergarten age child, or a school-age child.

(15) [~~(14)~~] Child-care home--A registered or licensed child-care home, as specified in §747.113 of this chapter (relating to What is a registered child-care home?) or §747.115 of this chapter (relating to What is a licensed child-care home?). This term includes the program, home, grounds, furnishings, and equipment.

(16) [~~(15)~~] Child-care program--The services and activities provided by a child-care home.

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

(18) [~~(17)~~] Clock hour--An actual hour of documented:

(A) Attendance at instructor-led training, such as seminars, workshops, conferences, early childhood classes, and other planned learning opportunities, provided by an individual or individuals as specified in §747.1315(a) of this chapter (relating to Must child-care training meet certain criteria?); or

(B) Self-instructional training that was created by an individual or individuals, as specified in §747.1315(a) and (b) of this chapter, or self-study training.

(19) [~~(18)~~] Corporal punishment--The infliction of physical pain on a child as a means of controlling behavior. This includes

spanking, hitting with a hand or instrument, slapping, pinching, shaking, biting, or thumping a child.

(20) [~~(19)~~] Days--Calendar days, unless otherwise stated.

(21) [~~(20)~~] Employee--An assistant caregiver, substitute caregiver, or any other person a child-care home employs full-time or part-time to work for wages, salary, or other compensation, including kitchen staff, office staff, maintenance staff, or anyone hired to transport a child.

(22) [~~(21)~~] Enrollment--The list of names or number of children who have been admitted to attend a child-care home for any given period of time; the number of children enrolled in a child-care home may vary from the number of children in attendance on any given day.

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

(24) [~~(23)~~] Field trips--Activities conducted away from the child-care home.

(25) [~~(24)~~] Food service--The preparation or serving of meals or snacks.

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

(27) [~~(26)~~] Garbage--Waste food or items that when deteriorating cause offensive odors and attract rodents, insects, and other pests.

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

(29) Hazardous materials--Any substance or chemical that is a health hazard or physical hazard, as determined by the Environmental Protection Agency. Also referred to as "toxic materials" and "toxic chemicals" in this chapter

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

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

(32) [~~(30)~~] High school equivalent--

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

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

(33) [~~(31)~~] Individual activities--Opportunities for the child to work independently or to be away from the group[~~,~~] but supervised.

(34) [~~(32)~~] Infant--A child from birth through 17 months.

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

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

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

(38) [~~(36)~~] Natural environment--Settings that are natural or typical for all children of the same age without regard to ability or disability. For example, a natural environment for learning social skills is a play group of peers.

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

(A) Home voluntarily closes;

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

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

(D) Home must close because its permit is automatically revoked according to the Human Resources Code §§42.048(e), 42.052(i), or 42.054(f).

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

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

(42) [~~(40)~~] Pre-kindergarten age child--A child who is three or four years of age before the beginning of the current school year.

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

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

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

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

(A) Washing with water and soap;

(B) Rinsing with clear water;

(C) Soaking in or spraying on a bleach [~~disinfecting~~] solution for at least two minutes;[~~.~~]

(D) Rinsing with cool water only those items that children are likely to place in their mouths; and

(E) [~~(D)~~] Allowing the surface or item to air-dry.

(47) [~~(45)~~] School-age child--A child who is five years of age and older and is enrolled in or has completed kindergarten.

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

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

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

(51) [~~(49)~~] Special care needs--A child with special care needs is a child who has:

(A) A [~~a~~] chronic physical, developmental, behavioral, or emotional condition and who also requires assistance beyond that required by a child generally to perform tasks that are within the typical chronological range of development, including the movement of large or small muscles, learning, talking, communicating, comprehension, emotional regulation, self-help, social skills, emotional well-being, seeing, hearing, and breathing; or

(B) A limitation due to an injury, illness or allergy.

(52) [~~(50)~~] State or local fire authority [~~marshal~~]--A fire official who is authorized to conduct fire safety inspections on behalf of [~~designated by~~] the city, county, or state government, including certified fire inspectors. Also referred to as "fire marshal" in this chapter.

(53) [~~(51)~~] Toddler--A child from 18 months through 35 months.

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

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

(56) Weather permitting--Weather conditions that do not pose any concerns for health and safety such as significant risk of frostbite or heat-related illness. This includes adverse weather conditions in which children may still play safely outdoors for shorter periods with appropriate adjustments to clothing and any necessary access to water, shade, or shelter.

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SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 1. PRIMARY CAREGIVER RESPONSIBILITIES

26 TAC §747.207

STATUTORY AUTHORITY

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

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

§747.207. What are my responsibilities as the primary caregiver?

You are responsible for:

(1) Developing and implementing your child-care home's operational policies, which comply with or exceed Division 4 of this subchapter (relating to Operational Policies);

(2) Ensuring all assistant caregivers and substitute caregivers comply with the relevant minimum standards for those caregivers, as specified in this chapter, and are provided assignments that match their skills, abilities, and training;

(3) Ensuring all household members comply with the minimum standards that apply to household members, as specified in this chapter;

(4) Reporting suspected abuse, neglect, or exploitation directly to the Texas Abuse and Neglect Hotline [~~Texas Department of Family and Protective Services~~], as required by Texas Family Code §261.1401. You may not delegate your responsibility to make a report, and you may not require a household member or employee to seek approval to file a report or notify you that a report was made;

(5) Ensuring parents can visit your child-care home any time during all hours of operation to observe their child, program activities, the home, the grounds, and the equipment, without having to secure prior approval;

(6) Initiating background checks as specified in Chapter 745, Subchapter F of this title (relating to Background Checks);

(7) Ensuring all information related to background checks is kept confidential and not disclosed to unauthorized persons, as required by the Human Resources Code, §40.005(d) and (e);

(8) Complying with the liability insurance requirements in this division;

(9) Complying with:

(A) The child-care licensing law, found in Chapter 42 of the Human Resources Code;

(B) All the minimum standards that apply to your licensed or registered child-care home, as specified in this chapter;

(C) All other applicable laws and rules in the Texas Administrative Code; and

(10) Ensuring the total number of children in care at the home or away from the home, such as during a field trip, never exceeds the capacity of the home as specified on the license or registration.

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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DIVISION 2. REQUIRED NOTIFICATIONS

26 TAC §§747.303, 747.305, 747.307

STATUTORY AUTHORITY

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

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

§747.303. What other situations require notification to Licensing?

(a) You must notify us as soon as possible, but no later than two days after:

(1) Any occurrence that renders all or part of your child-care home unsafe or unsanitary for a child;

(2) Injury to a child in your care that requires medical treatment by a health-care professional or hospitalization;

(3) A child in your care shows signs or symptoms of an illness that requires hospitalization;

(4) You become aware that a household member, caregiver, or child in care contracts an illness deemed notifiable by the Texas Department of State Health Services as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Disease);

(5) A person for whom you are required to request a background check under Chapter 745, Subchapter F of this title (relating to Background Checks) is arrested or charged with a crime;

(6) The occurrence of any other non-routine situation that places, or may place, a child at risk for injury or harm, such as forgetting a child in a vehicle or not preventing a child from wandering away from your child-care home unsupervised; and

(7) A new individual becomes a controlling person at your operation, or an individual that was previously a controlling person ceases to be a controlling person at your operation.

(b) You must notify us immediately if a child dies while in your care.

§747.305. What emergency and medical situations must I notify parents about?

(a) You must notify the parent of a child immediately if there is an allegation that the child has been abused, neglected, or exploited, as defined in Texas Family Code §261.001, while in your care.

(b) After you ensure the safety of the child, you must notify the parent of the child immediately after the child:

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

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

(3) Has had an emergency anaphylaxis reaction that required administration of an unassigned epinephrine auto-injector;

(4) Has been involved in any non-routine situation that placed, or may have placed, the child at risk for injury or harm. For

example, forgetting the child in a vehicle or failing to prevent the child from wandering away from your child-care home unsupervised; or

(5) Has been involved in any situation that renders the child-care home unsafe, such as a fire, flood, or damage to the child-care home as a result of severe weather.

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

(d) You must provide written notice to the parent of each child attending the child-care home within 48 hours when any child in your care, a caregiver, or a household member has contracted a communicable disease deemed notifiable by the Texas Department of State Health Services as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Disease).

(e) You must provide written notice to the parent of each child attending the child-care home within 48 hours when there is an outbreak of lice or other infestation in the child-care home.

§747.307. What are the notification requirements when Licensing finds my child-care home deficient in a standard related to safe sleeping or the abuse, neglect, or exploitation of a child?

(a) You must notify the parent of each child attending your child-care home of a deficiency in:

(1) A safe sleeping standard noted in subsection (b) of this section; or

(2) The abuse, neglect, or exploitation standard in §747.1501(a)(3) of this chapter (relating to What general responsibilities do caregivers have in my child-care home?).

(b) The following are safe sleeping standards requiring notification:

(1) §747.2309(a)(1) of this chapter (relating to What specific safety requirements must my cribs meet?);

(2) §747.2311(2)(A) of this chapter (relating to Are play yards allowed?);

(3) §747.2315(a)(4) and (b) of this chapter (relating to What specific types of equipment am I prohibited from using with infants?);

(4) §747.2326 of this chapter (relating to May I allow infants to sleep in a restrictive device?);

(5) §747.2327 of this chapter (relating to How must I position an infant for sleep? [~~Are infants required to sleep on their backs?~~]);

(6) §747.2328 of this chapter (relating to May I swaddle an infant to help the infant sleep?); and

(7) §747.2329 of this chapter (relating to If an infant has difficulty falling asleep, may I cover the infant's head or crib?).

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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DIVISION 3. REQUIRED POSTINGS

26 TAC §747.403

STATUTORY AUTHORITY

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

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

§747.403. What telephone numbers must I post and where must I post them?

You must post in a prominent place the following telephone numbers:

(1) 911 or, if 911 is not available in your area, you must post the telephone numbers for:

(A) Emergency medical services;

(B) Law enforcement; and

(C) Fire department;

(2) Poison control (1-800-222-1222);

(3) The Texas Abuse and Neglect Hotline (1-800-252-5400);

(4) The local Licensing office telephone number; and

(5) Your telephone number, name, and home address.

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

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SUBCHAPTER C. RECORD KEEPING

DIVISION 1. RECORDS OF CHILDREN

26 TAC §747.605

STATUTORY AUTHORITY

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

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

§747.605. What admission information must I obtain for each child?

You must obtain at least the following information before admitting a child to the child-care home:

(1) The child's name and birth date;

(2) The child's home address and telephone number;

(3) Date of the child's admission to the child-care home;

(4) Name and address of parent(s);

(5) Telephone numbers at which parent(s) can be reached while the child is in care;

(6) Name, address, and telephone number of another responsible individual (friend or relative) who should be contacted in an emergency when the parent cannot be reached;

(7) Names and telephone numbers of persons other than a parent to whom the child may be released;

(8) Permission for transportation, if provided, including any authorized pick-up and drop-off locations;

(9) Permission for field trips, if provided;

(10) Permission for participation in water activities, if provided;

(11) Name, address, and telephone number of the child's physician or an emergency-care facility;

(12) Authorization to obtain emergency medical care and to transport the child for emergency medical treatment;

(13) A statement of the child's special care needs, which must include:

(A) Any limitations or restrictions on the child's activities;

(B) Special care the child requires, including:

(i) Any reasonable accommodations or modifications;

(ii) Any adaptive equipment provided for the child; and

(iii) Symptoms or indications of potential complications related to a physical, cognitive, or mental condition that may warrant prevention or intervention while the child is in care; and

(C) Any medications prescribed for continuous, long-term use [~~. This includes, but is not limited to, allergies, existing illness, previous serious illness and injuries, hospitalizations during the past 12 months, and any medications prescribed for continuous, long-term use~~];

(14) The name and telephone number of the school a school-age child attends;

(15) Permission for a school-age child to ride a bus, walk to or from school or home, or to be released to the care of a sibling under 18 years old, if applicable; and

(16) The child's allergies and a [~~A~~] completed food allergy emergency plan for the child, if applicable.

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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DIVISION 2. RECORDS OF ACCIDENTS AND INCIDENTS

26 TAC §747.701

STATUTORY AUTHORITY

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

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

§747.701. What written records must I keep of accidents and injuries that occur at my child-care home?

You must record the following information on the Licensing Incident/Illness Report Form 7239 or another form that contains at least the same information:

(1) An injury to a child in care that required medical treatment by a health-care professional or hospitalization;

(2) An illness that required the hospitalization of a child in care;

(3) An incident where a child in care had an emergency anaphylaxis reaction that required administration of an unassigned epinephrine auto-injector;

(4) An incident of a child in care or caregiver contracting a communicable disease deemed notifiable by the Texas Department of State Health Services as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases); and

(5) Any other non-routine situation that placed, or may have placed, a child at risk for injury or harm, such as forgetting a child in a vehicle or not preventing a child from wandering away from the child-care home.

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DIVISION 3. RECORDS THAT MUST BE KEPT ON FILE AT THE CHILD-CARE HOME

26 TAC §747.801

STATUTORY AUTHORITY

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

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

§747.801. What records must I keep at my child-care home?
You must maintain and make the following records available for our review upon request during hours of operation. Paragraphs (8), (9), and (10) are optional, but if provided, will allow Licensing to avoid duplicating the evaluation of standards that have been evaluated by another state agency within the past year:

(1) Children's records, as specified in Division 1 of this subchapter (relating to Records of Children);

(2) Infant feeding instructions, as required in §747.2321 of this chapter (relating to Must I obtain written feeding instructions for children not ready for table food?), if applicable;

(3) Personnel and training records, as required in §747.901 of this subchapter (relating to What information must I maintain in my personnel records?), and in §747.1327 of this chapter (relating to What documentation must I provide to Licensing to verify that caregivers have met training requirements [~~have been met~~]?);

(4) Menus, as required in §747.3113 of this chapter (relating to Must I post and maintain daily menus?);

(5) Medication records, as required in §747.3605 of this chapter (relating to How must I administer medication to a child in my care?) if applicable;

(6) Pet vaccination records, as required in §747.3703 of this chapter (relating to Must I keep documentation of vaccinations for the animals?), if applicable;

(7) Safety documentation for emergency drills, fire extinguishers, smoke detectors, and emergency evacuation and relocation diagram, as required in §747.5005 of this chapter (relating to Must I practice my emergency preparedness plan?), §747.5007 of this chapter (relating to Must I have an emergency evacuation and relocation diagram?), §747.5107 of this chapter (relating to How often must I inspect and service the fire extinguisher?), §747.5115 of this chapter (relating to How often must the smoke detectors at my child-care home be tested?), and §747.5117 of this chapter (relating to How often must I have an electronic smoke alarm system tested?);

(8) Most recent Texas Department of State Health Services immunization compliance review form, if applicable;

(9) Most recent Texas Department of Agriculture Child and Adult Care Food Program report, if applicable;

(10) Most recent local workforce board Child-Care Services Contractor inspection report, if applicable;

(11) Written approval from the fire marshal to provide care above or below ground level, if applicable;

(12) Most recent Licensing form certifying that you have reviewed each of the bulletins and notices issued by the United States Consumer Product Safety Commission regarding unsafe children's products and that there are no unsafe children's products in use or accessible to children in the home;

(13) Documentation for all full-sized and non-full-sized cribs, as specified in §747.2309(a)(9) of this chapter (relating to What specific safety requirements must my cribs meet?);

(14) Proof of current liability insurance coverage or, if applicable, that you have provided written notice to the parent of each child that you do not carry the insurance; and

(15) Proof that you have notified parents in writing of deficiencies in safe sleeping and abuse, neglect, or exploitation, as specified in §747.307 of this chapter (relating to What are the notification requirements when Licensing finds my child-care home deficient in a standard related to safe sleeping or the abuse, neglect, or exploitation of a child?) and §747.309 of this chapter (relating to How must I notify parents of a safe sleep deficiency or an abuse, neglect, or exploitation deficiency?).

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DIVISION 4. RECORDS ON CAREGIVERS AND HOUSEHOLD MEMBERS

26 TAC §747.901

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and

§531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of Texas Human Resources Code.

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

§747.901. What information must I maintain in my personnel records?

You must keep at least the following at the child-care home for each assistant caregiver and substitute caregiver, as specified in this chapter:

(1) Documentation showing the dates of the first and last day on the job;

(2) Documentation showing how the caregiver meets the minimum age and education qualifications, if applicable;

(3) A copy of a health card or health care professional's statement verifying the caregiver is free of active tuberculosis, if required by the regional Texas Department of State Health Services TB program or local health authority;

(4) A notarized Licensing Affidavit for Applicants for Employment form as specified in Human Resources Code, §42.059;

(5) A record of training hours, including documentation required by §747.1327 of this chapter (relating to What documentation must I provide to Licensing to verify that caregivers have met training requirements?);

(6) Proof of request for all background checks required under 40 TAC Chapter 745, Subchapter F (relating to Background Checks);

(7) A copy of a photo identification;

(8) A copy of a current driver's license for each person or caregiver that transports a child in care; and

(9) A statement signed and dated by the caregiver in a licensed child-care home verifying the date the caregiver attended training during orientation that includes an overview regarding the prevention, recognition, and reporting of child maltreatment, as specified in §747.1301 of this chapter (relating to What must orientation for caregivers at my child-care home include?)

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SUBCHAPTER D. PERSONNEL
DIVISION 2. PRIMARY CAREGIVER QUALIFICATIONS FOR A LICENSED CHILD-CARE HOME

26 TAC §§747.1107, 747.1123, 747.1131

STATUTORY AUTHORITY

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

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

§747.1107. What qualifications must I meet to be the primary caregiver of a licensed child-care home?

Except as otherwise provided in this division, you must:

(1) Be at least 21 years of age;

(2) Have a:

(A) High school diploma; or

(B) High school equivalent;

(3) Have a certificate of completion of the Licensing pre-application course within one year prior to your application date;

(4) Meet the requirements in Subchapter F of Chapter 745 of this title (relating to Background Checks);

(5) Have a current certificate of training in pediatric first aid and pediatric CPR as specified in §747.1313 of this subchapter (relating to Who must have pediatric first-aid and pediatric CPR training?);

(6) Have a current record of a tuberculosis (TB) examination showing you are free of contagious TB, if required by the Texas Department of State Health Services or local health authority;

(7) Have proof of training in the following:

(A) Prevention, recognition, and reporting of child maltreatment, including:

(i) Factors indicating a child is at risk for abuse or neglect;

(ii) Warning signs indicating a child may be a victim of abuse or neglect;

(iii) Procedures for reporting child abuse or neglect; and

(iv) Community organizations that have training programs available to employees, children, and parents;

(B) Recognizing and preventing shaken baby syndrome and abusive head trauma;

(C) Understanding and using safe sleep practices and preventing sudden infant death syndrome (SIDS);

(D) Understanding early childhood brain development;

(E) Understanding the developmental stages of children;

(F) Emergency preparedness;

(G) Preventing and controlling the spread of communicable diseases, including immunizations;

(H) Administering medication, if applicable, including compliance with §747.3603 of this chapter (relating to What authorization must I obtain before administering a medication to a child in my care?);

(I) Preventing and responding to emergencies due to food or an allergic reaction;

(J) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

(K) Handling, storing, and disposing of hazardous materials including compliance with §747.3221 of this chapter (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?); and

(L) Precautions in transporting children if your child-care home plans to transport a child whose chronological or developmental age is younger than nine years old; and

(8) Have one of the following combinations of education and experience in a licensed child-care center, or in a licensed or registered child-care home, as defined in §747.1113 of this division (relating to What constitutes experience in a licensed child-care center, or in a licensed or registered child-care home?):
Figure: 26 TAC §747.1107(8)
[~~Figure:~~ ~~26 TAC §747.1107(8)~~]

§747.1129. May I substitute clock hours or CEUs for any of the educational requirements in this division?

(a) Clock hours or CEUs may only be substituted for the required college credit hours in child development and management.

(b) 50 clock hours or five CEUs may be substituted for every three college credit hours required in child development and management.

(c) The documentation to verify the clock hours or CEUs must be as specified in §747.1327 of this subchapter [~~title~~] (relating to What documentation must I provide to Licensing to verify that caregivers have met training requirements [~~have been met~~]?).

§747.1131. What additional documentation must I submit to show I am qualified to be a primary caregiver of a licensed child-care home?

(a) In addition to showing that you meet the minimum qualifications for a primary caregiver, you must submit the following to Licensing staff:

(1) A completed Licensing Personal History Statement form specifying your education and experience;

(2) An original and current Licensing Child-Care Director's Certificate form, an original college transcript, or original training certificates which verify the educational requirements. Original letters may be substituted for training certificates, provided they include the same information as specified in §747.1327 of this subchapter [~~title~~] (relating to What documentation must I provide to Licensing to verify that caregivers have met training requirements [~~have been met~~]?); and

(3) Complete dates, names, addresses, and telephone numbers which support the required experience.

(b) You must submit the information to us as a part of a new application for a permit.

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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DIVISION 4. PROFESSIONAL DEVELOPMENT

26 TAC §747.1305, §747.1309

STATUTORY AUTHORITY

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

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

§747.1305. What areas of training must the annual training for substitute and assistant caregivers cover?

(a) Each caregiver counted in the child/caregiver ratio on more than ten separate occasions in one training year, as specified in §747.1311 of this division (relating to When must the annual training be obtained?) must obtain annual training relevant to the age of the children for whom the caregiver provides care.

(b) At least six clock hours of the annual training hours must be in one or more of the following topics:

(1) Child growth and development;

(2) Guidance and discipline;

(3) Age-appropriate curriculum; and

(4) Teacher-child interaction.

(c) If your home provides care for a child younger than 24 months, one hour of the annual training hours must cover the following topics:

(1) Recognizing and preventing shaken baby syndrome and abusive head trauma;

(2) Understanding and using safe sleep practices and preventing sudden infant death syndrome (SIDS); and

(3) Understanding early childhood brain development.

(d) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:

(1) Emergency preparedness;

(2) Preventing and controlling the spread of communicable diseases, including immunizations;

(3) Administering medication, if applicable, including compliance with §747.3603 of this chapter (relating to What authorization must I obtain before administering a medication to a child in my care?);

(4) Preventing and responding to emergencies due to food or an allergic reaction;

(5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; and

(6) Handling, storing, and disposing of hazardous materials including compliance with §747.3221 of this chapter (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?).

(e) The remaining annual training hours must be in one or more of the following topics:

(1) Care of children with special needs;

(2) Child health (for example, nutrition and physical activity);

(3) Safety;

(4) Risk management;

(5) Identification and care of ill children;

(6) Cultural diversity for children and families;

(7) Professional development (for example, effective communication with families and time and stress management);

(8) Topics relevant to the particular ages of children in care (for example, caregivers working with infants or toddlers should receive training on biting and toilet training);

(9) Planning developmentally appropriate learning activities;

(10) Observation and assessment;

(11) Attachment and responsive care giving; and

(12) Minimum standards and how they apply to the caregiver.

(f) For an assistant caregiver or substitute caregiver described in §747.1303(3)(B) of this division (relating to What training must I ensure that my caregivers have within certain timeframes?), no [~~No~~] more than 12 [~~80%~~] of the required 15 annual training hours may come from self-instructional training. No more than three of those self-instructional hours may come from self-study training.

(g) For an assistant caregiver or substitute caregiver described in §747.1303(4)(B) of this division, no more than 19 of the required 24 annual training hours may come from self-instructional training. No more than three of those self-instructional hours may come from self-study training.

(h) [~~(g)~~] Annual training is exclusive of any requirements for orientation, pediatric first aid and pediatric CPR training, transportation safety training, and any training received through a high school child-care work-study program.

§747.1309. What areas of training must the annual training for the primary caregiver cover?

(a) You must obtain at least 30 clock hours of training each year relevant to the age of the children for whom you provide care.

(b) At least six clock hours of the annual training hours must be in one or more of the following topics:

(1) Child growth and development;

(2) Guidance and discipline;

(3) Age-appropriate curriculum; and

(4) Teacher-child interaction.

(c) If your home provides care for children younger than 24 months, one hour of the annual training hours must cover the following topics:

(1) Recognizing and preventing shaken baby syndrome;

(2) Understanding and using safe sleep practices and preventing sudden infant death syndrome (SIDS); and

(3) Understanding early childhood brain development.

(d) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:

(1) Emergency preparedness;

(2) Preventing and controlling the spread of communicable diseases, including immunizations;

(3) Administering medication, if applicable, including compliance with §747.3603 of this chapter (relating to What authorization must I obtain before administering a medication to a child in my care?);

(4) Preventing and responding to emergencies due to food or an allergic reaction;

(5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; and

(6) Handling, storing, and disposing of hazardous materials including compliance with §747.3221 of this chapter (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?).

(e) If you have:

(1) Five or fewer years of experience as a primary caregiver in a licensed or registered child-care home, you must complete at least six of the annual training hours in management techniques, leadership, or staff supervision; or

(2) More than five years of experience as a primary caregiver in a licensed or registered child-care home, you must complete at least three of the annual training hours in management techniques, leadership, or staff supervision.

(f) The remainder of annual training hours must be selected from the training topics specified in §747.1305(e) of this chapter (relating to What areas of training must the annual training for substitute and assistant caregivers cover?).

(g) You may obtain clock hours or CEUs from the same sources as other caregivers.

(h) You may not earn training hours by presenting training to other caregivers.

(i) No more than 24 [~~80%~~] of the required 30 annual training hours may come from self-instructional training. No more than three of those self-instructional hours may come from self-study training.

(j) The 30 clock hours of annual training are exclusive of any requirements for the Licensing pre-application course, pediatric first aid and pediatric CPR training, and transportation safety training.

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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DIVISION 6. GENERAL RESPONSIBILITIES FOR CAREGIVERS AND HOUSEHOLD MEMBERS

26 TAC §747.1501, §747.1503

STATUTORY AUTHORITY

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

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

§747.1501. What general responsibilities do caregivers have in my child-care home?

(a) You and all other caregivers are responsible for seeing that children are:

(1) Treated with courtesy, respect, acceptance, and patience;

(2) Recognized and respected for their uniqueness as an individual;

(3) Not abused, neglected, or exploited; and

(4) Released only to a parent or a person designated by a parent.

(b) You and all other caregivers must report suspected abuse, neglect, or exploitation to DFPS as specified in Texas Family Code §261.101.

(c) You and all other caregivers must also:

(1) Demonstrate competency, good judgment, and self-control in the presence of children;

(2) Know and comply with the minimum standards specified in this chapter;

[~~(3) Know each child's name and have information showing the child's age;~~]

(3) [~~(4)~~] Supervise children at all times, as specified in §747.1503 of this division [~~title~~] (relating to What responsibilities does a caregiver have when supervising a child or children? [~~What does Licensing mean by "supervise children at all times"?~~]);

[~~(5) Ensure the children are not out of control;~~]

(4) [~~(6)~~] Be free from other activities not directly involving the teaching, care, and supervision of children, such as:

(A) Administrative and clerical duties that take the caregiver's attention away from the children;

(B) Janitorial duties; and

(C) Personal use of electronic devices, such as cell phones, MP3 players, and video games. Cell phones may be briefly used for necessary phone calls, as long as appropriate supervision is maintained; [~~and~~]

(5) Provide care that is consistent with the child's habits, interests, strengths, and any special needs, including any special supervision needs or care as outlined in §747.2107 of this chapter (relating to What are my responsibilities when planning activities for a child in care with special care needs?;

(6) [~~(7)~~] Interact with children in a positive manner; and

(7) Set appropriate behavior expectations based on the child's current stage of development.

§747.1503. What responsibilities does a caregiver have when supervising a child or children?

(a) The caregiver is responsible for:

(1) Knowing which children the caregiver is responsible for;

(2) Knowing how many children the caregiver is responsible for;

(3) Knowing each child's name and having information showing each child's age;

(4) Providing the level of supervision necessary to ensure each child's safety and well-being, including physical proximity and auditory or visual awareness of each child's on going activity as appropriate; and

(5) Being able to intervene when necessary to ensure each child's safety.

(b) In deciding how closely to supervise a child, the caregiver must take into account:

(1) The child's chronological age;

(2) The child's current stage of development;

(3) The child's individual differences and abilities;

(4) The indoor and outdoor layout of the operation;

(5) The circumstances, hazards, and risks surrounding the child; and

(6) The child's physical, mental, emotional, and social needs.

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

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26 TAC §747.1503

STATUTORY AUTHORITY

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

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

§747.1503. What does Licensing mean by "supervise children at all times"?

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SUBCHAPTER F. DEVELOPMENTAL ACTIVITIES AND ACTIVITY PLAN

26 TAC §747.2101, §747.2107

STATUTORY AUTHORITY

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

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

§747.2101. What must [~~Must~~] I consider when providing [~~provide~~] planned activities for the children in my child-care home?

[~~(a)~~[[~~Yes.~~] You must provide a planned program of activities designed to meet the individual needs and developmental levels of the children in the group.

[~~(b) You must ensure that children who need special care due to disabling or limiting conditions receive the care recommended by a health-care professional or qualified professionals affiliated with the local school district or early childhood intervention program. These basic care requirements must be documented and on file for review at the child-care home during operating hours. Activities must integrate all children with or without special care needs. You may need to adapt equipment and vary methods to ensure that you care for children with special needs in a natural environment.~~]

§747.2107. What are my responsibilities when planning activities for a child in care with special care needs?

You must:

(1) Provide a child with special care needs with the accommodations recommended by:

(A) A health-care professional; or

(B) A qualified professional affiliated with the local school district or early childhood intervention program;

(2) Utilize as recommended any adaptive equipment that has been provided to the home for a child's use;

(3) Ensure that a child who receives early intervention services or special education services can receive those services from a qualified service provider at your home, with parental request and approval;

(4) Ensure that activities integrate children with and without special care needs; and

(5) Ensure that caregivers adapt equipment and procedures and vary methods as necessary to ensure that you care for a child with special needs in a natural environment.

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SUBCHAPTER H. BASIC CARE REQUIREMENTS FOR INFANTS

26 TAC §§747.2305, 747.2315, 747.2323, 747.2324, 747.2326, 747.2327

STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions

of the Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of Texas Human Resources Code.

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

§747.2305. What furnishings and equipment must I have available for infants?

Furnishings and equipment for infants must include at least the following:

(1) An individual crib to sleep in for each non-walking infant younger than 12 months of age;

(2) An individual crib, cot, bed, or mat that is waterproof or washable for each:

(A) Walking [~~walking~~] infant; and

(B) Non-walking infant 12 months of age or older;

(3) A sufficient number of toys to keep the infants engaged in activities.

§747.2315. What specific types of equipment am I prohibited from using with infants?

(a) You may not use the following equipment for infants, which has been identified as unsafe for infants by the Consumer Product Safety Commission and the American Academy of Pediatrics:

(1) Baby walkers, which are devices that allow an infant to sit inside a walker equipped with rollers or wheels and move across the floor;

(2) Baby doorway jumpers, which are devices that allow an infant to bounce while supported in a seat by an elastic "bungee cord" suspended from a doorway;

(3) Accordion Safety gates; and

(4) Bean bags, waterbeds, and foam pads used as sleeping equipment.

(b) Except for a tight-fitting [~~tight fitting~~] sheet and as provided in subsection (c) of this section, the crib or play yard must be bare for an infant younger than twelve months of age.

(c) A crib mattress cover may also be used to protect against wetness, but the cover must:

(1) Be designed specifically for the size and type of crib and crib mattress that it is being used with;

(2) Be tight fitting and thin; and

(3) Not be designed to make the sleep surface softer.

§747.2323. What are the requirements regarding [~~Must I provide~~] a regularly scheduled naptime for infants?

[~~Yes.~~] Each infant must have a nap period that:

(1) Allows the infant to maintain his or her own pattern of sleeping and waking periods; and

(2) Is supervised by the caregiver to ensure auditory or visual awareness of the infant in accordance with [~~according to~~] §747.1503 of this chapter [~~title~~] (relating to What responsibilities does a caregiver have when supervising a child or children? [~~What does Licensing mean by "supervise children at all times"?~~]).

§747.2324. Where must an infant sleep?

An infant must sleep:

(1) In a designated crib, cot, bed, or mat as required by §747.2305 of this subchapter (relating to What furnishings and equipment must I have available for infants?); and

(2) In an area where the caregiver has auditory or visual awareness of the infant.

§747.2326. May I allow infants to sleep in a restrictive device?

(a) If you do not have a Sleep Exception Form that includes a signed statement from a health-care professional stating that the child sleeping in a restrictive device is medically necessary:

(1) You may not allow an infant to sleep in a restrictive device; and [~~.~~]

(2) If an infant falls asleep in a restrictive device, you must remove the infant [~~must be removed~~] from the device and place the infant [~~placed~~] in a crib as soon as possible.

(b) You may allow an infant to [~~Infants may~~] sleep in a restrictive device if you have a completed Sleep Exception Form that includes a signed statement from a health-care professional stating that the infant sleeping in a restrictive device is medically necessary.

§747.2327. How must I position an infant for sleep? [~~Are infants required to sleep on their backs?~~]

(a) You must place an infant [~~Infants not yet able to turn over on their own must be placed~~] in a face-up sleeping position in the infant's own crib, unless you have a completed Sleep Exception Form that includes a signed statement from a health-care professional stating that a different sleeping position for the infant is medically necessary.

(b) An infant who is developmentally able to roll from back to stomach and stomach to back may do so independently after you have placed the infant in a face-up position for sleep.

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

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SUBCHAPTER I. BASIC CARE REQUIREMENTS FOR TODDLERS

26 TAC §747.2403

STATUTORY AUTHORITY

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

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

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

§747.2403. How must I arrange the space where I care for toddlers?

The toddler care area must include:

(1) Spaces in the child-care home that allow both individual and group time; and

(2) A play environment that allows the caregiver to supervise all children as defined in §747.1503 of this chapter [~~title~~] (relating to What responsibilities does a caregiver have when supervising a child or children? [~~What does Licensing mean by "supervise children at all times"?~~]).

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SUBCHAPTER J. BASIC CARE REQUIREMENTS FOR PRE-KINDERGARTEN AGE CHILDREN

26 TAC §747.2501

STATUTORY AUTHORITY

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

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

§747.2501. What are the basic care requirements for pre-kindergarten age children?

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

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26 TAC §747.2501

STATUTORY AUTHORITY

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

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

§747.2501. What are the basic requirements for pre-kindergarten age children?

Basic care for pre-kindergarten age children must include:

(1) Routines such as diapering or toileting, eating, napping or resting, indoor activity times, and outdoor activity times;

(2) Individual attention given to each pre-kindergarten age child; and

(3) Interactions that encourage a child to communicate and express feelings in appropriate ways.

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

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SUBCHAPTER K. BASIC CARE REQUIREMENTS FOR SCHOOL-AGE CHILDREN

26 TAC §747.2603

STATUTORY AUTHORITY

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

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

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

§747.2603. How must I arrange the space used by school-age children?

The school-age care area must include:

(1) Space to set up interest centers or focused play areas during the activity, such as arts and crafts; music and movement; blocks and construction; drama and theater; math and reasoning activities; science and nature; language and reading activities, such as books, story tapes and language games, stories read or told on a weekly basis, and cultural awareness, which are:

(A) Organized for independent use by children; and

(B) Arranged so that the caregiver can supervise the children according to §747.1503 of this chapter [~~title~~] (relating to What responsibilities does a caregiver have when supervising a child or children? [~~What does Licensing mean by "supervise children at all times"?~~]);

(2) Space where children can have individual activities yet be supervised; and

(3) Space for quiet time to do homework.

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SUBCHAPTER L. DISCIPLINE

26 TAC §747.2705

STATUTORY AUTHORITY

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

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

§747.2705. What types of discipline and guidance or punishment are prohibited?

There must be no harsh, cruel, or unusual treatment of any child. The following types of discipline and guidance are prohibited:

(1) Corporal punishment or threats of corporal punishment;

(2) Punishment associated with food, naps, or toilet training;

(3) Grabbing or pulling on a child;

[~~(3) Pinching, shaking, or biting a child;~~]

[~~(4) Hitting a child with a hand or instrument;~~]

(4) [~~(5)~~] Putting anything in or on a child's mouth;

(5) [~~(6)~~] Humiliating, ridiculing, rejecting, or yelling at a child;

(6) [~~(7)~~] Subjecting a child to harsh, abusive, or profane language;

(7) [~~(8)~~] Placing a child in a locked or dark room, bathroom, or closet;

(8) Placing a child in a restrictive device for time out;

(9) Withholding active play or keeping a child inside as a consequence for behavior, unless the child is exhibiting behavior during active play that requires a brief supervised separation or time out that is consistent with §747.2703(4)(D) of this subchapter (relating to What methods of discipline and guidance may I use?); and

(10) Requiring a child to remain silent or inactive for inappropriately long periods of time for the child's age[~~, including requiring a child to remain in a restrictive device~~].

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SUBCHAPTER Q. NUTRITION AND FOOD SERVICE

26 TAC §747.3101

STATUTORY AUTHORITY

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

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

§747.3101. What are the basic requirements for meal and snack times?

(a) You must serve all children regular meals and morning and afternoon snacks as specified in this subchapter.

(b) The meals and snacks must follow the meal patterns established by the U.S. Department of Agriculture (USDA) Child and Adult Care Food Program (CACFP) that is administered by the Texas Department of Agriculture. You must follow these patterns regardless of whether you are participating in the program for reimbursement.

(c) If you serve breakfast, you do not have to serve a morning snack.

(d) A child must not go more than three hours without a meal or snack being offered[,] unless the child is sleeping.

(e) You must serve enough food to allow [~~children~~] a child to have second servings from the vegetable, fruit, grain, and milk groups, if the child requests it.

(f) You must ensure a supply of clean, sanitary drinking water:

(1) Is [~~is~~] always available to each child at every snack, mealtime, and during and after active play; and

(2) Is [~~is~~] served in a safe and sanitary manner.

(g) You must not serve beverages with added sugars, such as carbonated beverages, fruit punch, or sweetened milk except for a special occasion such as a holiday or birthday celebration, unless otherwise allowed by the CACFP.

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

(i) You must not serve a child a food identified on the child's food allergy emergency plan as specified in §747.3617 of this chapter (relating to What is a food allergy emergency plan?).

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SUBCHAPTER R. HEALTH PRACTICES
DIVISION 2. DIAPER CHANGING

26 TAC §747.3303

STATUTORY AUTHORITY

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

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

§747.3303. What equipment must I have for diaper changing?

(a) You must have a diaper changing table or surface that is:

(1) Smooth, non-absorbent, and easy to clean; and

(2) Located so that the caregiver using the diapering surface can supervise children at all times, as specified in §747.1503 of this chapter [~~title~~] (relating to What responsibilities does a caregiver have when supervising a child or children? [~~What does Licensing mean by "supervise children at all times"?~~]).

(b) You must not use areas for diaper changing that children come in close contact with during play or eating, such as dining tables, sofas, or floor play areas.

(c) If the diaper changing table or surface is above the floor level, then at all times when the child is on the table/surface:

(1) There must be a safety mechanism (such as raised sides) that is used;

(2) The caregivers hand must remain on the child; or (3) The caregiver must be facing the child and within an arm's length of the child.

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: October 23, 2022
For further information, please call: (512) 438-3269

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DIVISION 3. ILLNESS AND INJURY

26 TAC §747.3401

STATUTORY AUTHORITY

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

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

§747.3401. What type of illness would prohibit a child from attending the child-care home?

You must not allow an ill child to attend your child-care home if one or more of the following exists:

(1) The illness prevents the child from participating comfortably in child-care activities, including outdoor play;

(2) The illness results in a greater need for care than caregivers can provide without compromising the health, safety, and supervision of the other children in care;

(3) The child has one of the following (unless a medical evaluation by a health-care professional indicates that you can include the child in the child-care activities):

(A) An oral temperature above 101 degrees that is accompanied by behavior changes or other signs or symptoms of illness;

(B) A tympanic (ear) temperature above 100 degrees that is accompanied by behavior changes or other signs or symptoms of illness. Tympanic thermometers are not recommended for children under six months old;

(C) An axillary (armpit) temperature above 100 degrees that is accompanied by behavior changes or other signs or symptoms of illness;

(D) An infrared temporal (forehead) temperature above 100 degrees that is accompanied by behavior changes or other signs or symptoms of illness; or

(E) [~~(D)~~] Symptoms and signs of possible severe illness, such as lethargy, abnormal breathing, uncontrolled diarrhea, two or more vomiting episodes in 24 hours, rash with fever, mouth sores with drooling, behavior changes, or other signs that the child may be severely ill; or

(4) A health-care professional has diagnosed the child with a communicable disease, and the child does not have medical documentation to indicate that the child is no longer contagious.

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 S. SAFETY PRACTICES
DIVISION 1. SAFETY PRECAUTIONS

26 TAC §747.3501

STATUTORY AUTHORITY

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

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

§747.3501. What safety precautions must I take to protect children in my child-care home?

All areas accessible to a child must be free from hazards including, but not limited to, the following:

(1) Electrical outlets accessible to a child younger than five years must have child-proof covers or safety outlets;

(2) 220-volt electrical connections within any child's reach must be covered with a screen or guard;

(3) Air conditioners, electric fans, and heaters must be mounted out of all children's reach or have safeguards that keep any child from being injured;

(4) Glass in sliding doors must be clearly marked with decals or other materials placed at children's eye level;

(5) Play materials and equipment must be safe and free from sharp or rough edges and toxic paints;

(6) Poisonous or potentially harmful plants must be inaccessible to children;

(7) Bottle warmers must be inaccessible to all children and used only according to manufacturer instructions;

(8) [~~(7)~~] All storage chests, boxes, trunks, or similar items with hinged lids must be equipped with a lid support designed to hold the lid open in any position, be equipped with ventilation holes, and must not have a latch that might close and trap a child inside; and

(9) [~~(8)~~] All bodies of water, such as, pools, hot tubs, ponds, creeks, birdbaths, fountains, buckets, and rain barrels, must be inaccessible to children.

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

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Karen Ray
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DIVISION 4. FIRST-AID KITS

26 TAC §747.3803

STATUTORY AUTHORITY

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

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

§747.3803. What items must each first-aid kit contain?

(a) Each first-aid kit must contain the following supplies:

(1) A guide to first aid and emergency care;

(2) Adhesive tape;

(3) Antiseptic solutions or wipes;

[(4) ~~Cotton balls;~~]

(4) [~~(5)~~] Adhesive [~~Multi-size adhesive~~] bandages;

(5) [~~(6)~~] Scissors;

(6) [~~(7)~~] Sterile gauze pads;

(7) [~~(8)~~] Thermometer, preferably non-glass;

(8) [~~(9)~~] Tweezers; and

(9) [~~(10)~~] Waterproof, disposable gloves.

(b) The first-aid supplies must not have expired.

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 T. PHYSICAL FACILITIES
DIVISION 1. INDOOR SPACE REQUIREMENTS

26 TAC §747.4015

STATUTORY AUTHORITY

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

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

§747.4015. May I care for children above or below ground level?

To care for children on any level above or below ground level, you must: [~~You must not care for children on any level above or below ground level without~~]

(1) Obtain written approval from the state or local fire authority; and

(2) Follow any restrictions issued by the state or local fire authority, including any age limits placed on the approval [~~marshal~~].

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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DIVISION 4 FURNITURE AND EQUIPMENT

26 TAC §747.4307

STATUTORY AUTHORITY

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

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

§747.4307. Must I have a telephone at my child-care home?

(a) [~~Yes.~~] You must have a working telephone or cellular phone at your child-care home [~~with a listed telephone number~~].

(b) If your telephone is a landline, the telephone number must be listed.

(c) If you use cellular phone service at your home, you must ensure all caregivers and adult household members know the address of the home to direct emergency personnel to the home when dialing 911 from the home.

(d) You must post your phone number as required by §747.403 of this chapter (relating to What telephone numbers must I post and where must I post them?) and update the posting any time your phone number changes.

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

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

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SUBCHAPTER X. TRANSPORTATION

26 TAC §747.5407

STATUTORY AUTHORITY

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

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

§747.5407. What child passenger safety seat system must I use when I transport children?

(a) You must use a child passenger safety seat system to restrain a child when transporting the child. The restraint system: [~~must~~]

(1) Must meet the federal standards for crash-tested systems as set by the National Highway Traffic Safety Administration; and

(2) Must [~~must~~] be properly secured in the vehicle according to manufacturer's instructions.

(b) You must use child safety seats and child booster seats that have not expired or been damaged or involved in an accident.

(c) [~~(b)~~] You must secure each child in an infant safety seat, rear-facing convertible child safety seat, forward-facing child safety seat, child booster seat, safety vest, harness, or a safety belt, as appropriate to the child's age, height, and weight according to manufacturer's instructions for all vehicles specified in subsection (e) [~~(d)~~] of this section, unless otherwise noted in this subchapter.

(d) [~~(c)~~] A child 12 years old or younger must not ride in the front seat of a vehicle.

(e) [~~(d)~~] The following safety restraint devices for a child must be used when the vehicle is on and during all times when the vehicle is in motion:
Figure: 26 TAC §747.5407(e)
~~Figure: 26 TAC §747.5407(e)~~

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

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Karen Ray
Chief Counsel
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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION
DIVISION 7. INSPECTIONS FOR WINDSTORM AND HAIL INSURANCE

28 TAC §§5.4604, 5.4606, 5.4621, 5.4626, 5.4640

The Texas Department of Insurance (TDI) proposes amendments to 28 TAC §§5.4604, 5.4606, 5.4621, 5.4626, and 5.4640, concerning certificates of compliance for improvements for purposes of coverage under a policy issued by the Texas Windstorm Insurance Association (TWIA). Amendments to §5.4640 implement House Bill 3564, 87th Legislature, 2021.

EXPLANATION. Insurance Code §2210.2515 specifies that TDI must issue certificates of compliance for structures meeting specified criteria. Certificates of compliance issued by TDI are used to demonstrate evidence of insurability for the purpose of TWIA coverage. HB 3564 amended §2210.2515 to eliminate TDI's authority to rescind certificates of compliance after issuance.

Currently, such forms are submitted to TDI by several methods: through the TDI Windstorm system available on the TDI website, by email, by fax, and by mail. The amendments to §5.4604 and §5.4621 requiring electronic submission of certain forms through TDI's Windstorm system will increase government efficiency by eliminating duplication of effort among TDI staff.

The Windstorm system is an electronic system that allows users to find a windstorm inspector, apply for a certificate of compliance, access and print the certificate, and apply to become an inspector. Only professional engineers and inspectors use the system to apply for certificates of compliance. Currently, when TDI receives certificates of compliance form submissions by alternate means (such as fax, email, or paper), TDI staff must enter the form information into TDI's Windstorm system. When such form filings are submitted with omissions or errors, TDI staff must contact the filer to request a correction or refiling. This leads to delays in processing applications. In contrast, filers using TDI's Windstorm system are notified immediately if their submission lacks a necessary component.

The amendments to §5.4606 and §5.4626 to require electronic submission of supporting documentation through the Windstorm system or by email will streamline and expedite TDI's receipt and review of this information. Although the Windstorm system is not currently equipped to accept supporting documentation, TDI plans to modify the Windstorm system to accept it. Email submissions will be accepted while the Windstorm system is modified to accept such supporting documentation and will continue to be accepted thereafter.

The amendments to §5.4640 are necessary to implement the changes made by HB 3564. Current §5.4640 states that TDI may rescind a certificate of compliance. HB 3564 amended Insurance Code §2210.2515(k) to prohibit TDI from rescinding a certificate of compliance for a completed or ongoing improvement for purposes of coverage under a TWIA-issued policy after issuing the certificate.

TDI posted an informal draft of the proposed rule text on June 15, 2022. Stakeholder comments on the informal draft informed the drafting of this proposal. Particularly, in response to feedback from the informal rule posting, the proposed rule text specifies which forms must be submitted electronically and allows submission of supporting information by email.

The proposed amendments to the sections are described in the following paragraphs.

Section 5.4604. The amendments to §5.4604 revise subsection (c) to require that the information in the Application for Certificate of Compliance for Completed Improvement, Form WPI-2E, be submitted electronically to TDI using the Windstorm system. Amendments to the section also correct the name of the Texas Board of Professional Engineers and Land Surveyors, correct a reference to the section heading of §5.4606, and add the whole form title for Form WPI-2E.

Section 5.4606. The amendments to §5.406 add subsection (e) to require that all supporting evidence be submitted electronically to TDI using the Windstorm system or through email at windstorm@tdi.texas.gov. The amendments also correct the name of the Window & Door Manufacturers Association and make nonsubstantive changes to punctuation and capitalization elements and a reference to another section to conform to TDI style guidelines.

Section 5.4621. The amendments to §5.4621 add a new paragraph (5) to require that the information collected in the Application for Certificate of Compliance, Form WPI-1, and the Inspection Verification Form, Form WPI-2, be submitted electronically to TDI using the Windstorm system. The amendments remove existing paragraphs (2) and (6). These paragraphs address Form WPI-1 and Form WPI-2, but those forms will now be addressed in new paragraph (5). Finally, the amendments renumber the paragraphs in the section and update internal references within the section as appropriate to reflect the new and deleted paragraphs.

Section 5.4626. The amendments to §5.4626 add new subsection (c) to require all information required by the section to be submitted electronically to TDI using the Windstorm system or through email at windstorm@tdi.texas.gov. The amendments also redesignate current subsection (c) as subsection (d) to reflect the addition of the new subsection.

Section 5.4640. The amendments to §5.4640 eliminate references to the rescission of issued certificates of compliance, consistent with HB 3564. In addition, the amendments correct the name of Form WPI-2E, correct a reference to the heading of §5.4606, and make nonsubstantive punctuation changes to conform to TDI style guidelines.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Mark Worman, deputy commissioner, Property and Casualty Division, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. Mr. Worman made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the sections.

Mr. Worman does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. Worman expects that the sections will have the public benefit of ensuring that TDI's rules accurately conform to Insurance Code §2210.2515(k), which will reduce the regulatory burden and costs imposed on filing entities, conserve agency resources, and increase government efficiency.

Mr. Worman expects that the proposed amendments relating to electronic submission of certain documents will potentially impose an initial economic cost on persons required to comply with the amendments that currently file such documents by alternate means. This will affect only a small number of filers, as most already use TDI's Windstorm system. The small number of filers that do not currently use TDI's Windstorm system may have some minimal administrative costs initially.

It is not feasible for TDI to quantify these minimal administrative costs because potential costs relating to electronic filing are highly specific to each filing entity. Streamlining the submission process is expected to reduce the time and effort required by filers. TDI expects that this will more than offset any initial administrative costs and result in an overall reduction in costs of compliance.

TDI has determined that the elements of the proposal implementing HB 3564, relating to rescission of a completed certificate of compliance, will not impose costs on regulated persons.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses or on rural communities. As a result, TDI is not required to prepare a regulatory flexibility analysis as would otherwise be required under Government Code §2006.002(c).

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that while the electronic submission requirements of this proposal may impose an initial cost on regulated persons, these costs will be more than offset by savings that result from a reduction in application processing time and effort. In addition, under Government Code §2001.0045(c)(2), TDI is not required to repeal or amend another rule because the proposed amendments to §5.4640 are necessary to implement legislation and the proposed amendments relating to electronic submission of information will reduce the burden or responsibilities imposed on regulated persons.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed rule is in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will 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 the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or

require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on October 10, 2022. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, PO Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, PO Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on October 10, 2022. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes §§5.4604, 5.4606, 5.4621, 5.4626, and 5.4640 under Insurance Code §2210.008(b) and §36.001.

Insurance Code §2210.008(b) allows the Commissioner to adopt rules that are reasonable and necessary to implement Insurance Code Chapter 2210.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 5.4604 implements HB 3564 and Insurance Code §2210.2515. Sections 5.4606, 5.4621, 5.4626, and 5.4640 implement Insurance Code §2210.2551.

§5.4604. Certification Form for Completed Improvement.

(a) Persons must submit the following information when applying to TDI for a certificate of compliance for a completed improvement on a structure:

(1) a statement from a professional engineer licensed by the Texas Board of Professional Engineers [~~Engineer~~] and Land Surveyors that affirms that the engineer has:

(A) designed the improvement;

(B) affixed the engineer's seal on the design; and

(C) affirmed the design complies with the applicable building code under the plan of operation, and that the improvement was constructed in accordance with the design; or

(2) a sealed postconstruction evaluation report completed and submitted by a professional engineer licensed by the Texas Board of Professional Engineers [~~Engineer~~] and Land Surveyors that:

(A) confirms the improvement's compliance with the applicable building code under the plan of operation; and

(B) includes supporting evidence such as that identified in §5.4606 of this title (relating to Supporting Evidence for Sealed Postconstruction Evaluation Report and Design for Certificate of Compliance for Completed Improvement) for the engineer's postconstruction evaluation report.

(b) The following information must also be provided:

(1) the physical address (including street, street number, city, county, and ZIP code);

(2) whether the original transfer of title from the builder to the initial owner of the improvement has occurred or is expected to occur in the future;

(3) whether the improvement is substantially completed;

(4) the wind zone location;

(5) whether the structure is in a Coastal Barrier Resource System Unit;

(6) the property owner's name and contact information, or the name and contact information of the builder or contractor that made the completed improvement;

(7) the name and contact information of the engineer certifying the completed improvement;

(8) the date construction of the completed improvement began;

(9) the date of application for the certificate of compliance for the completed improvement;

(10) the name of the person submitting the application for the certificate of compliance for the completed improvement;

(11) the type of structure to which the completed improvement was made, including the structure's name or number and number of units, if applicable;

(12) the subject of the inspection (for example, entire structure, addition, alteration, or repair);

(13) the building code standard and applicable wind load standard under which the completed improvement was designed or inspected;

(14) the wind-speed conditions that the completed improvement is designed to withstand;

(15) the importance factor or risk category of the structure;

(16) the exposure category of the structure;

(17) information on the protection of exterior openings from windborne debris;

(18) the dates the completed improvement was inspected; and

(19) the signature and Texas Board of Professional Engineers and Land Surveyors registration number of the engineer certifying the completed improvement.

(c) The information required by [~~TDI will make available the Certification Form for Completed Improvement, Form WPI-2E on which the information in~~] subsections (a) and (b) of this section, also listed in Form WPI-2E, Application for Certificate of Compliance for Completed Improvement, must be submitted to TDI electronically using the TDI Windstorm system, which is available on the TDI website. [~~may be provided.~~]

(d) If an applicant applies using a sealed design, an engineer must maintain the evidence supporting that design, such as information listed in §5.4606(a)(8) of this title and §5.4623 of this title (relating to Information Required to Inspect Design Documents). TDI may request to view the sealed design and supporting documents, as applicable, to verify that there is a sealed design, designed by the engineer, and to verify the engineer's affirmation that the design complies with the applicable building code under the plan of operation and the improvement was constructed in accordance with the design.

§5.4606. Supporting Evidence for Sealed Postconstruction Evaluation Report and Design for Certificate of Compliance for Completed Improvement.

(a) "Supporting evidence" includes:

(1) product [~~Product~~] evaluations;

(2) installation [~~Installation~~] instructions from the manufacturer for the product;

(3) test [~~Test~~] data;

(4) written [~~Written~~] evidence from inspections--for example, an inspection report;

(5) photographs [~~Photographs~~];

(6) video [~~Video~~] recording;

(7) plans [~~Plans~~], either as-built plans (plans that demonstrate compliance with the applicable building code for the design of the structure), design drawings, shop drawings, or sketches; or

(8) any [~~Any~~] other documentation or other form of evidence that supports statements made in the application, design, or postconstruction evaluation report submitted to TDI, as applicable.

(b) To verify that an engineer's postconstruction evaluation report confirms the completed improvement's compliance with the applicable building code under the plan of operation, as required under §5.4604 of this title (relating to Certification Form for Completed Improvement), it must include supporting evidence. TDI may also request supporting evidence, as applicable, to verify an engineer's application, sealed design, or affirmation under §5.4604(a) of this title. The supporting evidence may include the following, as related to the part of the structure being certified.[:]

(1) Roof covering certifications.

(A) Supporting evidence identifying all products and components included in the scope of the certification, including roof covering, fasteners, underlayment, roof deck, roof vents, skylights, and all other parts of the roof-covering assembly.

(B) Manufacturer's installation instructions, product evaluation reports, or test laboratory reports, and code-required installation requirements for all components included in the scope of certification (for example, see subparagraph (A) of this paragraph).

(C) Supporting evidence that the components of the installed building products meet or exceed the code-required design pressures.

(D) Supporting evidence verifying that the roof covering, roof vents, and skylights are installed according to the manufacturer installation instructions, product test reports, and specifications in the applicable windstorm building code.

(E) Applicable information listed in §5.4626 of this title (relating to Substantiating Information).

(2) Building product certifications.

(A) Supporting evidence identifying all products included in the scope of the certification, including windows, side-hinged doors, sliding doors, overhead doors (sectional or rolling), exterior wall coverings, and other applicable building products.

(B) Manufacturer's installation instructions; product evaluation, reports, or test laboratory reports; product certifications; and code-required installation requirements for the building products included in the scope of the certification.

(C) Supporting evidence verifying that design-pressure ratings for all building products meet or exceed the required design pressures as specified in the applicable windstorm building code for the installation.

(D) Supporting evidence verifying that the building products that are required by the applicable windstorm building code were certified by a certification agency, such as the Window & [~~and~~] Door Manufacturers Association or the American Architectural Manufacturers Association; are properly labeled; and have valid certifications.

(E) Supporting evidence recording all information on certification labels and verifying that the product test pressure exceeds code-required design pressure, and that building products are within the maximum size tested on each label and are installed exactly as tested.

(F) Supporting evidence specifying the minimum design pressures required by the applicable windstorm building code.

(G) Applicable information listed in §5.4626 of this title.

(H) Where the applicable windstorm building code requires windborne debris protection, supporting evidence either verifying the product is impact-resistant or protected with a windborne debris protection system. Where the applicable code requires windborne debris protection, the protection must be installed according to manufacturers' instructions and product test reports.

(3) Entire new building, existing building, or a new addition to an existing structure.

(A) Supporting evidence verifying complete load path as specified by the applicable windstorm building code, including connections between roof, walls, floor, and foundation.

(B) Supporting evidence verifying roof coverings as specified under paragraph (1) of this subsection.

(C) Supporting evidence verifying building products as specified under paragraph (2) of this subsection.

(D) Building plans, such as structural drawings from the engineer of record or as-built plans that demonstrate compliance with the applicable windstorm building code. The plans must show items such as lateral resisting elements, wall framing, roof framing, floor framing, and other pertinent elements of the structure that are included in the scope of work for the certification.

(E) Supporting evidence verifying the foundation system, such as existing plans or as-built plans. The plans must show the location of anchors, ties, or straps; pile locations; or other pertinent elements of the structural system that are included in the scope of work for the certification.

(F) For additions, supporting evidence verifying whether the addition is attached or detached from main structure. If the addition is attached, the supporting evidence must specify the load on the existing structure, the load imposed by the addition on the existing structure, and if the existing structure and the connection will satisfy the combined loading. Attached additions rely on the existing structure for stability and strength. Detached additions are independent of the existing structure. Supporting evidence must also verify load path from addition to existing structure, if applicable.

(G) Applicable information listed in §5.4626 of this title.

(c) Failure to provide the documents requested by TDI could result in a denial of a Certificate of Compliance for Completed Im-

provement (Engineered), Form WPI-8E, or other action taken by TDI as stated in §5.4640 of this title (relating to Oversight) or §5.4642 of this title (relating to Disciplinary Action).

(d) For each component inspected, including roof, window, door, garage door, or exterior cladding, the engineer listed on the certificate of compliance for completed improvement must retain the supporting evidence and applicable information described in this section for that component for five years from the date of the most recent certification application submitted on the structure.

(e) All supporting evidence must be submitted to TDI electronically using either the Windstorm system or by email to windstorm@tdi.texas.gov. The Windstorm system can be accessed on TDI's website.

§5.4621. Certification of Ongoing Improvements Inspected by Appointed Qualified Inspectors.

This section describes the procedure for the certification of ongoing improvements inspected by appointed qualified inspectors.

(1) Eligible structures. An appointed qualified inspector or a designated representative of an appointed qualified inspector may only inspect an ongoing improvement for which TDI has received the following information:

(A) the physical address (including street, street number, city, county, and ZIP code);

(B) the wind zone location;

(C) the type of structure the ongoing improvement is or is a part of, including the structure's name or number, and number of units, if applicable;

(D) the subject of the inspection (for example, entire structure, addition, alteration, or repair);

(E) the name and contact information of the appointed qualified inspector inspecting the ongoing improvement, or whose designated representative is inspecting the ongoing improvement;

(F) the storm code, if applicable;

(G) the date construction of the ongoing improvement began;

(H) the date of application for the certificate of compliance for the ongoing improvement;

(I) the name of the person submitting the application for the certificate of compliance for the ongoing improvement;

(J) the owner's name and contact information;

(K) the name and contact information of the builder or contractor making the ongoing improvement;

(L) whether the structure is located inside or outside city limits; and

(M) whether the structure is in a Coastal Barrier Resource Zone.

[~~(2) Application for Certificate of Compliance, Form WPI-1. TDI will make available the Application for Certificate of Compliance, Form WPI-1, on which the information in paragraph (1) of this section may be provided.~~]

(2) [~~(3)~~] Inspection. The appointed qualified inspector or a designated representative of the appointed qualified inspector must inspect for compliance with the applicable windstorm building code each ongoing improvement during each major construction phase, including the foundation stage; rough framing stage; final framing stage, including attachment of component and cladding items and installation of windborne debris protection; and installation of mechanical equipment. The appointed qualified inspector's designated representatives may assist in conducting inspections, but the appointed qualified inspector must closely monitor and provide direct supervision of any designated representative assisting with the inspection process.

(3) [~~(4)~~] Report. The appointed qualified inspector or a designated representative of the appointed qualified inspector must prepare all necessary construction inspection reports under §5.4625 of this title (relating to Inspection Reports).

(4) [~~(5)~~] Verification of compliance. If the appointed qualified inspector determines that the ongoing improvement meets the applicable windstorm building code standard, the appointed qualified inspector must submit the following information to TDI:

(A) the information required by paragraph (1)(A) - (F) of this section;

(B) the building code standard and applicable wind load standard with which the ongoing improvement complies;

(C) the wind speed conditions the ongoing improvement is certified to withstand;

(D) the dates the ongoing improvement was inspected;

(E) the exposure category of the structure;

(F) information on the protection of exterior openings from windborne debris;

(G) the risk category of the structure;

(H) the appointed qualified inspector's appointment number; and

(I) the application number from TDI.

(5) Electronic Submission. The information required by paragraphs (1) and (4) of this section, listed on Form WPI-1 and Form WPI-2, respectively, must be submitted to TDI electronically using the TDI Windstorm system, which is available on the TDI website.

[~~(6) Inspection Verification Form, Form WPI-1. TDI will make available the Inspection Verification Form, Form WPI-2, on which the inspector can provide the information required by paragraph (5) of this section.~~]

(6) [~~(7)~~] Notification of noncompliance. If the appointed qualified inspector determines that the ongoing improvement does not meet the applicable windstorm building code standard, the appointed qualified inspector must inform the person seeking certification in writing. The notice must:

(A) list specific deficiencies in the construction and deviations from the design;

(B) list other items of concern relating to the windstorm inspection and certification; and

(C) describe remedial actions required for compliance.

(7) [~~(8)~~] Verification of noncompliance. If the remedial actions described in the notification of noncompliance in paragraph (6)(C) [~~(7)(C)~~] of this section are not taken, the appointed qualified inspector must submit the information required by paragraph (4) [~~(5)~~] of this section to TDI, certifying that the ongoing improvement does not meet the applicable windstorm building code standard.

(8) [~~(9)~~] Review. TDI will review the submitted information and any other relevant information, including information requested under §5.4626 of this title (relating to Substantiating Infor-

mation), to determine whether the ongoing improvement meets the applicable windstorm building code standard.

(9) [~~(10)~~] Certification. If TDI determines that the ongoing improvement meets the windstorm building code standards, TDI will issue a form with the following information:

(A) the information described in paragraph (1)(A) - (C) of this section;

(B) the subject of the certification (for example, entire structure, addition, alteration, or repair);

(C) the building code standard and applicable wind load standard with which the ongoing improvement complies;

(D) the date construction of the ongoing improvement began;

(E) whether the occupancy type is considered residential, commercial, agricultural, or religious;

(F) the certification date;

(G) TDI's certification number; and

(H) the type of inspector.

§5.4626. Substantiating Information.

(a) On request from TDI, an appointed qualified inspector must provide information and evidence necessary to substantiate the appointed qualified inspector's verification that an ongoing improvement complies with the wind load requirements of the applicable building code.

(b) The appointed qualified inspector may provide the information and evidence described in subsection (a) of this section to TDI in the form of:

(1) product information on building components including manufacturer name, testing information, installation instructions, and model code evaluation reports or other building information as described in §5.4623 of this title (relating to Information Required to Inspect to Design Documents);

(2) information in windstorm plans, as described in §5.4623 of this title;

(3) inspection verification forms and other documents previously filed with TDI;

(4) as-built drawings;

(5) shop drawings;

(6) building product submittal information;

(7) photographs; and

(8) inspection reports, as described in §5.4625 of this title (relating to Inspection Reports).

(c) All information required by this section must be submitted to TDI electronically using the Windstorm system or by email to windstorm@tdi.texas.gov. The Windstorm system can be accessed on TDI's website.

(d) [~~(c)~~] For each structure inspected, an appointed qualified inspector must retain the substantiating evidence and information described in this section for five years from the date of the most recent inspection verification form submitted on the structure.

§5.4640. Oversight.

(a) Inspection oversight. An appointed qualified inspector is subject to TDI's regulatory authority, which includes oversight inspections conducted by TDI. TDI oversees all aspects of the inspection and notification of compliance of ongoing improvements by an appointed qualified inspector under Insurance Code Chapter 2210 and this chapter.

(b) Certificate of compliance oversight.

(1) Ongoing Improvements. As part of TDI's oversight, TDI may audit the inspections on structures for which it has received an Application for Windstorm Inspection Certificate of Compliance, Form WPI-1, or an Inspection Verification, Form WPI-2, including structures for which TDI has issued a Certificate of Compliance, Form WPI-8. If TDI determines that a structure does not meet the windstorm building code standards, TDI will not issue a Form WPI-8[~~; or if TDI has issued a Form WPI-8 on a structure that is subsequently found not to be in compliance with the windstorm building code standards, TDI may rescind the Form WPI-8~~].

(2) Completed Improvements.

(A) TDI may deny an application for certificate of compliance if the postconstruction evaluation report or Certification Form for Completed Improvement, Form WPI-2E, is not fully documented as required under §5.4604 of this title (relating to Certification Form for Completed Improvement) or §5.4606 of this title (relating to Supporting Evidence for Sealed Postconstruction Evaluation Report and Design for Certificate of Compliance for Completed Improvement). TDI may audit, inspect, or both audit and inspect structures for which it has received a Certificate of Compliance [~~a Certification Form~~] for Completed Improvement submission in its Windstorm system [~~, Form WPI-2E~~].

(B) TDI may submit a formal complaint to the Texas Board of Professional Engineers and Land Surveyors related to the engineering work of a professional engineer, as reflected in the sealed postconstruction evaluation report or other materials submitted by an engineer under §5.4604 and §5.4606 of this title.

(C) [~~TDI may rescind a Certificate of Compliance for Completed Improvement (Engineered), Form WPI-8E, if TDI finds that the improvement does not comply with the applicable building code under the plan of operation.~~] TDI may audit, inspect, or both audit and inspect structures for which TDI has issued a Certificate of Compliance for Completed Improvement (Engineered), Form WPI-8E.

(c) Types of oversight audits. TDI may conduct an oversight audit of an appointed qualified inspector by any one, or a combination, of the following methods.[~~:~~]

(1) TDI may conduct an audit of an appointed qualified inspector based on documents and other information submitted to TDI.[~~; or~~]

(2) TDI may conduct an on-site audit at the appointed qualified inspector's place of employment or ongoing improvement for which TDI has received a Form WPI-1 or a Form WPI-2.

(d) Notification of audits.

(1) In all audits in which TDI asks the appointed qualified inspector to bring substantiating information to the audit, TDI will expect the audit to take place no less than 15 days after the appointed qualified inspectors receives notice of the audit.

(2) The appointed qualified inspector may request a shorter time frame if a notice period in this subsection would cause a delay in the construction schedule.

(e) Information for oversight audits. In the process of conducting an oversight audit, TDI may require the appointed qualified inspector to provide:

(1) documentation described in §5.4626 of this title (relating to Substantiating Information); and

(2) any other information maintained by the appointed qualified inspector that will demonstrate that the ongoing improvement complies with the appropriate windstorm building code standards, and that the ongoing improvement is eligible for association insurance.

(f) Burden of verification. For oversight audits, the appointed qualified inspector bears the burden of verifying, under §5.4622 of this title (relating to Inspection Verification), that the ongoing improvement complies with the wind load requirements of the applicable building code.

(g) Requirement to provide information. The appointed qualified inspector must provide information related to an audit in the same manner and time frame as required in §5.4615(5) of this title (relating to General Responsibilities of Appointed Qualified Inspectors). Failure to provide the information requested by TDI under this section may result in the nonissuance [~~or rescission~~] of a Certificate of Compliance, Form WPI-8 for the ongoing improvement, and the appointed qualified inspector may be subject to disciplinary action by TDI, as described in §5.4642 of this title (relating to Disciplinary Action).

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

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Allison Eberhart
Deputy General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6587

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PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 102. PRACTICES AND PROCEDURES--GENERAL PROVISIONS

28 TAC §102.11

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 Texas Administrative Code §102.11(b), concerning Electronic Formats for Electronic Claim Data Request and Report. Section 102.11 implements a process for electronic exchange of data between DWC and insurance carriers as defined in Texas Labor Code §402.084.

EXPLANATION. The amendments correct a reference and make updates for plain language and agency style. Amending §102.11(b) is necessary to ensure that the rule provides DWC's current website address.

Section 102.11 implements a process for electronic exchange of data between DWC and insurance carriers as defined in Labor Code §402.084 for the purpose of determining if workers' compensation claims exist for individuals listed in a request for claim data. The rule sets requirements for requests and reports, confidentiality requirements, workers' compensation claim match criteria, and the process to request claim information. It directs the public to www.tdi.state.tx.us/wc to find the specific data requirements, data set transactions, data mapping, data edits, and fees per record. DWC's website has changed since it adopted §102.11(b). The proposed amendment updates the website address to DWC's current website, www.tdi.texas.gov/wc, to find the specific data requirements, data set transactions, data mapping, data edits, and fees per record.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner of Business Process Joseph McElrath has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the section, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Mr. McElrath does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. McElrath expects that enforcing and administering the proposed amendments will have the public benefits of ensuring that DWC's rules conform to Labor Code §§401.024 and 402.084 and are current and accurate, which promotes transparent and efficient regulation.

Mr. McElrath expects that the proposed amendments will not increase the cost to comply with Labor Code §402.084 and 28 TAC §102.11 because they do not impose requirements beyond those in the statute and do not create obligations beyond those in the current rule. Labor Code §402.084 requires DWC to set rules establishing a reasonable fee for information requested in an electronic data form by subclaimants or their representatives to control insurance fraud. The section also requires DWC to release to an insurance carrier certain data that will allow the insurance carrier to identify potential subclaims and pursue recovery allowed under Labor Code §409.009.

Currently, §102.11(b)(1) directs the public to www.tdi.state.tx.us/wc to find the specific data requirements, data set transactions, data mapping, data edits, and fees per record. A proposed amendment corrects the obsolete website reference and will direct the public to the current website at www.tdi.texas.gov/wc. The proposed amendment does not affect any cost associated with providing the specific data requirements, data set transactions, data mapping, data edits, and fees per record. As a result, any cost does not result from the enforcement or administration of the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed amendments only make changes to update obsolete references and make updates for plain language and agency style. The proposed amendments do not change the people the rule affects or impose additional costs. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal does not impose a possible cost on regulated persons. As a result, no additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will not expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

DWC made these determinations because the proposed amendments only make changes to update obsolete references and make updates for plain language and agency style. They do not change the people the rule affects or impose additional costs.

TAKINGS IMPACT ASSESSMENT. DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5 p.m., Central time, on October 24, 2022. Send your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050. The request for public hearing must be separate from any comments and received by DWC no later than 5 p.m., Central time, on October 24, 2022. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. DWC proposes §102.11(b) under Labor Code §§402.084, 401.024, 402.00111, 402.00116, and 402.061.

Labor Code 402.084 provides that DWC shall set rules establishing a reasonable fee for information requested in an electronic data form by subclaimants or their representatives to control insurance fraud. The section also requires DWC to release to an insurance carrier certain data that will allow the carrier to identify potential subclaims and pursue recovery allowed under Labor Code §409.009. Section 409.009 provides requirements for filing a written claim with DWC as a subclaimant.

Labor Code §401.024 provides that DWC shall prescribe the form, manner, and procedure for transmitting any authorized or required electronic transmission, including requirements related to security, confidentiality, accuracy, and accountability.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. Section 102.11 implements Labor Code §402.084, enacted by HB 1562, 77th Legislature, Regular Session (2001), amended by HB 251, 79th Legislature, Regular Session (2005).

§102.11. Electronic Formats for Electronic Claim Data Request and Report.

(a) (No change.)

(b) [~~The following words and terms, when used i~~] In this section, [~~shall have~~] the following definitions [~~meanings~~] apply:

(1) Claim Data Request and Report Implementation Guide (Guide)--The division [~~Division~~] specification document for the Claim Data Request and the Claim Data Report that defines specific data requirements, data set transactions, data mapping, data edits, and fees per record available at www.tdi.texas.gov/wc. [~~www.tdi.state.tx.us/wc.~~]

(2) - (5) (No change.)

(c) - (l) (No change.)

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

Filed with the Office of the Secretary of State on September 8, 2022.

TRD-202203613
Kara Mace
Deputy Commissioner of Legal Services
Texas Department of Insurance, Division of Workers' Compensation
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For further information, please call: (512) 804-4703

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 1. CENTRAL ADMINISTRATION
SUBCHAPTER C. ADMINISTRATION

34 TAC §1.200

The Comptroller of Public Accounts proposes new §1.200, concerning state employee family leave pool. The new section will be located in Chapter 1, new Subchapter C, Administration.

The new section implements House Bill 2063, 87th Legislature, R.S., 2021, which enacted Government Code, §§661.021 - 661.028 (State Employee Family Leave Pool).

Proposed §1.200 creates a process for the Comptroller's State Employee Family Leave Pool. Subsection (a) outlines the establishment and purpose, which is to provide eligible employees more flexibility in bonding with and caring for children during a child's first year following birth, adoption, or foster placement, and caring for a seriously ill family member or the employee, including pandemic-related illnesses or complications caused by a pandemic. Subsection (b) outlines guidelines for the program, provides for designation of a pool administrator, describes the responsibilities of the pool administrator, and provides that the operation of the family leave pool shall be consistent with Government Code, Chapter 661, Subchapter A-1.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed new rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed new rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new rule would benefit the public by implementing the rule regarding state employee family leave pool. There would be no significant anticipated economic cost to the public. The proposed new rule would have no fiscal impact on small businesses or rural communities.

Comments on the proposal may be submitted to Yadira Gibson, Senior Legal Counsel to Human Resources, Texas Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711 or to the email address: Yadi.Gibson@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

This new section is proposed under Government Code, §661.022(c), which requires the governing body of each state agency to adopt rules and prescribe procedures relating to the operation of the state employee family leave pool.

The new section implements Government Code, §§661.021 - 661.028 (State Employee Family Leave Pool)

§1.200. State Employee Family Leave Pool.

(a) Establishment and Purpose. In accordance with Government Code, Chapter 661, Subchapter A-1 (State Employee Family Leave Pool), the comptroller establishes the Employee Family Leave Pool program to provide eligible employees more flexibility in bonding with and caring for children during a child's first year following birth, adoption, or foster placement, and caring for a seriously ill family member or the employee, including pandemic-related illnesses or complications caused by a pandemic.

(b) Guidelines.

(1) Under the Employee Family Leave Pool, an agency employee may voluntarily transfer sick leave or vacation leave earned by the employee to the family leave pool, and employees may apply for leave time under the family leave pool.

(2) The comptroller or deputy comptroller shall designate a pool administrator.

(3) The pool administrator will develop procedures and forms as necessary for the administration of the family leave pool.

(4) Operation of the family leave pool shall be consistent with Government Code, Chapter 661, Subchapter A-1.

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 September 12, 2022.

TRD-202203667
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: October 23, 2022
For further information, please call: (512) 475-2220

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CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.334

The Comptroller of Public Accounts proposes amendments to §3.334, concerning local sales and use taxes.

Background.

The comptroller's local sales and use tax rulemaking process began in 2018, when several issues arose regarding local sales and use tax. The United States Supreme Court issued a decision in South Dakota v. Wayfair, Inc., 138 S. Ct. 2080 (June 21, 2018), which appeared to expand the states' authority to impose use tax collection obligations on remote sellers. In addition, as the comptroller began to receive inquiries regarding the legitimacy of various local tax revenue-sharing schemes, it became apparent that the comptroller's existing rule was inadequate to explain the comptroller's interpretation of the local sales and use tax consummation statutes.

Before proposing the rule amendments, the comptroller consulted with various organizations, including the Texas Municipal League, the City of Round Rock, the City of Coppell, and the City of Carrollton. The comptroller was aware that cities had conflicting concerns. Some were concerned that other cities were siphoning off sales tax revenue under various revenue-sharing schemes with vendors, while other cities were concerned that their revenue-sharing agreements with vendors would be in jeopardy. Again, it became clear that the comptroller's existing rule did not provide adequate guidance to resolve these concerns.

The comptroller published a notice of proposed rulemaking in the January 3, 2020, issue of the *Texas Register.* After the publication of the notice of proposed rulemaking, the comptroller extended the 30-day public comment period to 90 days. In addition, the comptroller held a public hearing on February 4, 2020. The comptroller scrutinized the comments, made some changes, and

rejected others. The comptroller published the final rule in the May 22, 2020, issue of the *Texas Register.*

The Cities of Round Rock, Coppell, DeSoto, Humble, and Carrollton then challenged the validity of the 2020 rule amendments. The litigation has been consolidated in Cause No. D-1-GN-21-003198, City of Coppell, Texas, et al. v. Glenn Hegar, in the 201st District Court of Travis County Texas.

The district court found that the comptroller failed to substantially comply with one or more of the procedural requirements for the notice of proposed rule (Government Code, §2001.024) when the comptroller adopted §3.334(b)(5). The court remanded §3.334(b)(5) to give the comptroller the opportunity to either revise or readopt it through established procedure. Accordingly, the comptroller is proposing to revise §3.334(b)(5) and other portions of the rule, with an explanation that augments the explanation in the notice of proposed rulemaking published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 98) and the order adopting amendments to §3.334 published in the May 22, 2020, issue of the *Texas Register* (45 TexReg 3499).

Proposed amendments

The comptroller proposes to amend subsection (a)(9) to make the language more consistent with Tax Code, §321.203(c-1):

(9) Fulfill--To complete an order by transferring possession of a taxable item to a purchaser, or to ship or deliver a taxable item to a location designated by the purchaser. The term does not include receiving or tracking an order, determining shipping costs, managing inventory, or other activities that do not involve the transfer, shipment, or delivery of a taxable item to the purchaser or to a location designated by the purchaser.

The comptroller proposes to amend the definition of "place of business of the seller" in subsection (a)(16):

(16) Place of business of the seller - general definition--A place of business of the seller must be an established outlet, office, or location operated by a seller for the purpose of receiving orders for taxable items from persons other than employees, independent contractors, and natural persons affiliated with the seller. An "established outlet, office, or location" requires staffing by one or more sales personnel. The term does not include a computer server, Internet protocol address, domain name, website, or software application. The "purpose" element of the definition may be established by proof that sales personnel of the seller received three or more orders for taxable items at the facility during the calendar year. ...

The definition of "place of business of the seller" comes into play in determining where a local sale or use is consummated. The consummation standards are not all "origin-based." Possible outcomes include consummation at the place of business where the order was received, consummation at the place of business from which the order was shipped or delivered, consummation at the location to which the item is shipped or delivered, and consummation at the first point in the state where the item is stored, used, or consumed. Tax Code, §321.203 and §321.205. The location of the consummation can be affected by whether an order is received at a "place of business of the seller" in Texas, and whether the seller ships or delivers the item from a "place of business of the seller" in Texas.

The consummation standards for municipal sales and use taxes are in Tax Code, §321.203 for sales tax and Tax Code, §321.205 for use tax. Other local sales and use tax statutes have similar standards. See, Tax Code, Chapter 322 (special purpose taxing authority sales and use tax) and Chapter 323 (county sales and use tax).

The rule uses "place of business of the seller," while the statute uses "place of business of the retailer." See Tax Code, §321.002(3)(A). The terms "seller" and "retailer" are synonymous for sales and use tax purposes. Tax Code, §151.008. The current rule and the proposed rule use "place of business of the seller" rather than "place of business of the retailer" to avoid potential confusion over the term "retailer." The term "retailer" is statutorily defined to include both retailers and wholesalers, as those terms are commonly used. Tax Code, §151.008.

The statute defines "place of business of the retailer" with 82 words:

"Place of business of the retailer" means an established outlet, office, or location operated by the retailer or the retailer's agent or employee for the purpose of receiving orders for taxable items and includes any location at which three or more orders are received by the retailer during a calendar year. A warehouse, storage yard, or manufacturing plant is not a "place of business of the retailer" unless at least three orders are received by the retailer during the calendar year at the warehouse, storage yard, or manufacturing plant.

The definition is narrower than the ordinary meaning of the phrase. The definition includes the concept of receiving orders for taxable items, which could exclude locations ordinarily considered to be places of business, such as executive offices. Additionally, a location is not a "place of business" simply because it receives orders. If that were the case, the legislature could have defined the phrase with those very words, which can be counted on one hand.

Against this backdrop, the comptroller proposes to amend the definition of "place of business of the seller" in subsection (a)(16).

The first sentence of the proposed definition states: "A place of business of the seller must be an established outlet, office, or location operated by a seller for the purpose of receiving orders for taxable items from persons other than employees, independent contractors, and natural persons affiliated with the seller." This definition tracks the statutory definition, but adds a qualifier from the existing rule definition, which would allow a facility to make in-house courtesy sales without becoming a place of business.

In the *City of Webster* litigation, the court of appeals stated: "we do not determine whether a place of business must be 'an established outlet, office, or location operated by the retailer or the retailer's agent or employee,' *see id.,* as appellees do not raise this issue." *Combs v. City of Webster,* 311 S.W.3d 85, 96 at n. 7 (Tex. App.-Austin 2009, pet. Denied). The first sentence of the proposed definition is worded in the imperative to clearly answer that unanswered question. The comptroller interprets the statute to mean that a place of business of the seller must be an established outlet, office, or location operated by a seller for the purpose of receiving orders for taxable items.

The second sentence states: "An 'established outlet, office, or location' requires staffing by one or more sales personnel." This requirement is based on several rules of statutory construction. Every word of a statute, including each word in the phrase "established outlet, office, or location," should have meaning. *Amarillo v. Martin,* 971 426, 430 (Tex. 1998). If the word "location" is given its broadest application, it would subsume the words "outlet" and "office," rendering them meaningless. Therefore, the rule of "ejusdem generis" should apply, in which general words

are not to be construed in their widest meaning, but are limited to persons or things of the same kind or class as those expressly mentioned. *Stanford v. Butler,* 181 S.W.2d 269 (Tex. 1944). Thus, a "location" should be a facility that is similar to an "outlet" or "office."

The term "outlet" implies the presence of sales personnel, particularly in the sales tax context. Each retail store is considered to be an "outlet" for reporting sales tax.

In the abstract, there could be many types of "offices." But in the context of "receiving orders," the term implies a sales office.

Thus, to provide something of a bright-line test for buyers, sellers, and auditors to follow, the rule provides that an "established outlet, office, or location" requires staffing by one or more sales personnel. *See, Perry Homes v. Strayhorn,* 108 S.W.3d 444, 448 (Tex. App.- Austin 2003, no pet.) (example of bright line rule); *DuPont Photomasks, Inc. v. Strayhorn,* 219 S.W.3d 414, 422 (Tex. App.-Austin 2006, pet. Denied) (example of bright line rule).

This interpretation of the statute is confirmed by legislative history. The Texas Legislature added the definition of "place of business of the retailer" in 1979. 66th Legislature, R.S., Ch. 624, Art. 1, §3 (SB 582). During that session of the legislature, a House Study Group analysis stated that the "bill is necessary to protect the state from possible consequences of the pending court suits." The analysis specifically referenced "Dunigan Tool and Supply v. Bullock" as one of those suits. The analysis is available at the Legislative Reference Library website at https://lrl.texas.gov/scanned/hroBillAnalyses/66-0/SB582.pdf.

In the *Dunigan* litigation, retail stores took orders that were fulfilled from a warehouse. The comptroller wanted to source the local tax to the retail stores, but the district court and the court of appeals sourced the local tax to the warehouse, declaring the warehouse to be a place of business. *Bullock v. Dunigan Tool & Supply Co.,* 588 S.W.2d 633 (Tex. Civ. App.- Austin, Sept. 6, 1979, writ ref'd n.r.e.).

The 1979 House Study Group bill analysis states that the bill was intended to protect the state from the consequences of the *Dunnigan* litigation. Thus, the legislative intent was that a fulfillment warehouse without sales personnel would not be a "place of business."

The legislative intent was further confirmed by the subsequent October 2, 1980, Interim Report of the House Ways and Means Committee, which was produced by the City of Coppell during the litigation. The committee was considering whether to allow the recently adopted statutory definition of "place of business" to expire. The committee described the consequence: "The location of sale would no longer be tied to permitted outlets, salesmen's locations, or sales offices." Interim Report at 20. These words confirm the comptroller's current interpretation that the definition of a "place of business" requires staffing by one or more sales personnel: "location" was intended to mean "salesmen's locations" and "office" was intended to mean "sales office."

In the subsequent legislative session, the legislature did not allow the "place of business" definition to expire, and instead, made it permanent. 67th Legislature, R.S., Ch. 838 §1 (H.B. 1838). The 1979 definition and its legislative history remain in place today. And, the comptroller's interpretation of "place of business," which tracks the legislative history, is a longstanding one. In 1985, the comptroller adopted the proposal for decision in Comptroller's Decision No. 15,654 (1985), which stated:

But it seems to the administrative law judge that the legislature was amending the law if not entirely in reaction to the then-pending case of *Bullock v. Dunigan Tool & Supply Co.,* 588 S.W.2d 633 (Tex. Civ. App.-Texarkana, writ ref'd n.r.e.), at least partly in reaction to that case. And if that be so, then the legislature did not want warehousing and storage facilities (many of which are outside city limits) to be the places where sales were consummated for local sales tax purposes unless orders were actually received there by personnel working there, but wanted the office location out of which the salesman operated to be the place where the sales were consummated.

The City of Coppell and others have advanced a contrary explanation regarding fulfillment warehouses that has superficial appeal: a warehouse cannot fulfill an order unless the warehouse has "received" the order, and therefore a fulfillment warehouse is inherently a "place of business." In the abstract, this argument may seem like a reasonable interpretation of the word "received." But not in context. When the words of the rather lengthy statutory definition are considered, and when the legislative history is considered, the legislature intended the opposite - a fulfillment warehouse is not automatically a "place of business" simply because orders have to be forwarded to the warehouse for fulfillment.

The third sentence in the proposed definition of "place of business" states: "The term does not include a computer server, Internet protocol address, domain name, website, or software application." This sentence is consistent with the concept that a "place of business" requires the presence of personnel to receive the order. Even a broad, every-day usage of the term "place of business" does not include computer servers, Internet protocol addresses, and automated telephone ordering systems. Many sellers house their computer servers at a co-location facility or rent computer server space at a managed hosting site. An ordinary person would not consider the physical locations of these computer servers to be places of business of the seller. Similarly, an ordinary person would not perceive an Internet protocol address, a domain name, or a website as an "established outlet, office, or location" so as to constitute a place of business in ordinary usage. And, in this statutory context, which is narrower than ordinary usage, the comptroller has concluded that the legislature could not have intended that the receipt of an order by an automated mechanical device would make the device an "established outlet, office or location operated by the retailer."

The treatment of computer servers, while new to the rule in 2020, is not new to the comptroller. Comptroller Letter Ruling (STAR Accession No.) 200510723L (2005) stated:

The location of the server does not create a "place of business" for purposes of local Tax Collection.

And Comptroller Letter Ruling (STAR Accession No.) 200605592L (2006) similarly stated:

The location of the server does not create a "place of business" for purposes of local tax collection.

And Comptroller Letter Ruling (STAR Accession No.) 201906015L (2019) similarly stated:

COMPANY operates **********'s online marketplace (Website) and various apps used by Texas customers to make online orders. ... Orders placed on the Website or through COMPANY's apps and processed and routed by servers are not received at a place of business.

The fourth sentence of the proposed definition of "place of business of the seller" states: "The 'purpose' element of the definition may be established by proof that sales personnel of the seller received three or more orders for taxable items at the facility during the calendar year." The sentence conforms the rule to the statute, as explained in *Combs v. City of Webster,* 311 S.W.3d 85, 96 (Tex. App.-Austin 2009, pet. denied). In that opinion, the court stated that the statutory "phrase 'and includes' can reasonably be interpreted to indicate that the 'for the purpose of' phrase and the 'three or more orders' phrase are alternate methods of satisfying the statutory definition."

Finally, in addition to being the most reasonable interpretation of the statute, the proposed definition of "place of business of the seller" is a practical interpretation that will facilitate uniformity and ease of administration for taxpayers and auditors. Website orders can be received at multiple physical addresses - any locations that have Internet access. A website order is sent to an Internet protocol ("IP") address. An IP address is not a permanent physical address. It is a series of numbers assigned to a device, such as a computer server. Websites may use dynamic IP addresses that are assigned by the network upon connection and that change over time. The public IP address of a website may simply be routing orders to different, private IP addresses. Load balancers may change the IP addresses that communicate with customers. Conversely, multiple web sites may be hosted at a single IP address.

The computer server receiving an order may belong to the seller or it may belong to a third party. The computer server may be situated on the seller's premises, it may be situated at a co-location facility operated by a third party, or it may be situated at a web hosting facility operated by a third party. The computer server may be one of multiple servers that serve the same website from different physical addresses as part of a cloud distribution network. The computer server may route the order to multiple other servers for load balancing purposes. Conversely, a single computer server may serve multiple websites. Also, the seller may or may not know the physical address of the server receiving the order. The physical locations of computer servers that receive website orders are often random, variable, and uncertain. The best way to treat computer servers consistently and coherently is to uniformly recognize that they are not "established" places of business of the seller.

In conclusion, regarding the proposed definition of "place of business of the seller," the comptroller is under no illusions that the definition will eliminate all ambiguities. In many instances, the determination of whether or not particular facilities have "sales personnel" will have to be made on a case-by-case basis. But the rule makes clear that mere hardware installations, or other facilities that do not use any personnel, are not "places of business of the seller." To that extent, the rule will help taxpayers understand how the comptroller interprets and intends to apply the statute.

The comptroller proposes to amend subsection (b)(1)(A) regarding distribution centers, manufacturing plants, storage yards, warehouses, or similar facilities to add the sentence: "The forwarding of previously received orders to the facility for fulfilment does not make the facility a place of business."

Subsection (b)(1)(A) is an application of the definition of "place of business of the seller" in subsection (a)(16). The explanation of subsection (a)(16) is also applicable to subsection (b)(1)(A).

The comptroller proposes to amend subsections (b)(4) and (b)(5) for stylistic reasons and to more clearly state the comptroller's application of the definition of place of business of the seller from subsection (a)(16):

(4) An order that is received by a salesperson who is not at a place of business of the seller when the salesperson receives the order is treated as being received at the location from which the salesperson operates. Examples include orders that a salesperson receives by mail, telephone, including Voice over Internet Protocol and cellular phone calls, facsimile, and email while traveling. The location from which the salesperson operates is the principal fixed location where the salesperson conducts work-related activities. The location from which a salesperson operates will be a place of business of the seller only if the location meets the definition of a "place of business of a seller" in subsection (a)(16) of this section on its own, without regard to the orders imputed to that location by this subsection.

(5) An order that is not received by a salesperson is received at a location that is not a place of business of the seller. Examples are orders received by a computer server through a shopping cart software program and orders received by an automated telephone ordering system.

The examples have been moved from the headings to separate sentences in both subsections (b)(4) and (b)(5), and labeled as examples. The new examples in subsection (b)(5) are more precise examples than the former examples of "a shopping website or shopping software application."

Subsection (b)(5) is an application of the definition of "place of business of the seller" in subsection (a)(16). The explanation of subsection (a)(16) is also applicable to subsection (b)(5).

The comptroller proposes to amend subsection (c)(2)(B)(ii) to make the language more consistent with Tax Code, §321.205(c):

(ii) Order not fulfilled in Texas. When an order is received by a seller at a location that is not a place of business of the seller in Texas, and is fulfilled from a location outside of Texas, the sale is not consummated in Texas. However, a use is considered to be consummated at the first point in this state where the item is stored, used, or consumed after the interstate transit has ceased. A taxable item delivered to a point in this state is presumed to be for storage, use, or consumption at that point until the contrary is established. Local use tax should be collected as provided in subsection (d) of this section. Except as provided in subsection (i)(3) of this section, a remote seller required to collect state use tax under §3.286(b)(2) of this title must also collect local use tax.

Sourcing of local tax

It has been alleged that the proposed rule would result in a wholesale policy change from origin sourcing to destination sourcing for website orders. However, there cannot be a wholesale policy change because the consummation statutes for website orders are not inherently origin-based in the first place. Marketplace sales made through marketplaces are consummated at destination. Tax Code, §321.203(e-1). And there are other circumstances in which website orders do not use origin sourcing. Website orders fulfilled from a place of business of the seller in Texas are consummated at the place of business where the order is fulfilled. Tax Code, §321.203(c-1). Website orders received outside of Texas and fulfilled from a location in Texas other than a place of business of the seller are consummated at destination. Tax Code, §321.203(c). Website orders that are

received outside of Texas and fulfilled from outside of Texas are consummated at destination. Tax Code, §321.205(c). And, amusement services, which may be delivered over the Internet, are sourced to destination. Tax Code, §321.203(h).

Rather than being a wholesale change in sourcing, the proposed rule is an articulation of the pre-existing comptroller interpretation of "place of business of the retailer" as defined by the legislature. The definition requires the presence of sales personnel to receive orders, and if there are no sales personnel involved, such as an automated website order received by a computer server, the order is received at a location that is not a "place of business." And, that interpretation of "place of business" does not mean that every website sale is sourced to destination, since some will be sourced to the place of business of the seller where the order is fulfilled.

It has also been alleged that the proposed subsection (b)(5) will change the way that Texas retailers with one place of business in Texas will source local tax. However, in most instances, subsection (b)(5) will not change the way that Texas retailers with one place of business in Texas will source local tax.

If orders are received by Internet servers located outside the state, local tax will be sourced the same regardless of the text of subsection (b)(5). Except for the application of special rules for remote sellers in subsection (i)(3), direct payment permit purchases in subsection (j), and certain taxable items, including taxable items sold by a marketplace provider, as provided in subsection (k), the sale will be consummated at the place of business of the seller in Texas from which the order is fulfilled, or if not, the a sale will be consummated, or a use will be consummated at the location in Texas to which the item is shipped or delivered or at which the purchaser of the item takes possession as provided in subsection (d). See §3.334(c), (c)(2), (j) and (k) and Tax Code, §321.203(b), (c-1), (e), (e-1), (f), (g), (g-1), (g-2), (g-3), (h), (i), (j), (k), (n) and §321.205(c).

If orders are placed in person at the place of business of the seller in Texas, local tax will be sourced the same regardless of the text of subsection (b)(5). Except for the application of special rules for direct payment permit purchases in subsection (j), and certain taxable items, including taxable items sold by a marketplace provider, as provided in subsection (k), the sale will be consummated at the single place of business of the seller in Texas where the order was received. See §3.334(c), (c)(1)(A), (j), and (k) and Tax Code, §321.203(b), (c), (e-1), (f), (g), (g-1), (g-2), (g-3), (h), (i), (j), (k), and (n).

If orders are received by sales personnel of the retailer at the place of business of the seller in Texas, but the orders are not placed in person by the buyer, local tax will be sourced the same regardless of the text of subsection (b)(5). Except for the application of special rules for direct payment permit purchases in subsection (j), and certain taxable items as provided in subsection (k), the sale will be consummated at the single place of business of the seller in Texas where the order was received. See §3.334(c), (c)(1)(B)(i), (c)(1)(B)(ii), (j), and (k) and Tax Code, §321.203(b), (c-1), (d), (f), (g), (g-1), (g-2), (g-3), (h), (i), (j), (k), and (n).

If orders are received by sales personnel of the retailer who are not at the place of business of the seller in Texas when they receive the orders, but who operate out of the place of business of the seller in Texas, local tax will be sourced the same regardless of the text of subsection (b)(5). Except for the application of special rules for direct payment permit purchases in subsection (j), and certain taxable items as provided in subsection (k), the sale will be consummated at the single place of business of the seller in Texas out of which the sales personnel operate. See §3.334(b)(4), (c), (c)(1)(B)(i), (c)(1)(B)(ii), (j), and (k) and Tax Code, §321.203(b), (c-1), (d), (f), (g), (g-1), (g-2), (g-3), (h), (i), (j), (k), and (n).

If orders are received by sales personnel of the retailer who are not at the place of business of the seller in Texas when they receive the orders, and who do not operate out of the place of business of the seller in Texas, local tax will be sourced the same regardless of the text of subsection (b)(5). Except for the application of special rules for direct payment permit purchases in subsection (j), and certain taxable items as provided in subsection (k), the sale will be consummated at the place of business of the seller in Texas from which the order is fulfilled, or if not, the sale will be consummated, or a use will be consummated at the location in Texas to which the item is shipped or delivered or at which the purchaser of the item takes possession as provided in subsection (d). See §3.334(c), (c)(2), (j) and (k) and Tax Code, §321.203(b), (c-1), (e), (f), (g), (g-1), (g-2), (g-3), (h), (i), (j), (k), (n) and §321.205(c).

If the orders are not received by sales personnel, such as orders received by an automated shopping website operated by the retailer, but the orders are fulfilled at the single place of business of the seller in Texas, local tax will be sourced the same regardless of the text of subsection (b)(5). Except for the application of special rules for direct payment permit purchases in subsection (j) of this section, and certain taxable items as provided in subsection (k) of this section, the sale will be consummated at the single place of business of the seller in Texas from which the orders are fulfilled. See §3.334(c), (c)(2)(A), (j) and (k), and Tax Code, §321.203(b), (c-1), (f), (g), (g-1), (g-2), (g-3), (h), (i), (j), (k), and (n).

If the orders are not received by sales personnel, such as orders received by an automated shopping website operated by the retailer, and the orders are shipped or delivered or the purchaser takes possession in the same jurisdiction in which the retailer's single place of business in Texas is located, local tax will be sourced the same regardless of the text of subsection (b)(5). Except for the application of special rules for direct payment permit purchases in subsection (j) of this section, and certain taxable items as provided in subsection (k) of this section, the sale or use will be consummated in the jurisdiction where the single place of business of the seller is located. See §3.334(c), (c)(2)(A), (c)(2)(B)(i), (c)(2)(B)(ii), (j) and (k), and Tax Code, §321.203(b), (c-1), (e), (f), (g), (g-1), (g-2), (g-3), (h), (i), (j), (k), and (n) and §321.205(c).

If the orders are received by a shopping website operated by a marketplace provider, or the orders are received by any other physical medium operated by a marketplace provider such as catalogs and stores, local tax will be sourced the same regardless of the text of subsection (b)(5). Except for the application of special rules for direct payment permit purchases in subsection (j), and certain taxable items as provided in subsection (k), the sale will be consummated at the location in Texas state to which the item is shipped or delivered or at which possession is taken by the purchaser. See §3.334(k)(5), (j) and (k), and Tax Code, §321.203(e-1), (f), (g), (g-1), (g-2), (g-3), (h), (i), (j), (k), and (n).

If orders are received from purchasers with direct pay permits, local tax will be sourced the same regardless of the text of subsection (b)(5). A use will be consummated, and local use tax will be due based upon the location where the permit holder first

stores or otherwise uses the item. See §3.334(j) and Tax Code, §321.205(d).

If the purchasers issue resale exemption certificates, subsection (b)(5) will have no effect because the transactions will not be subject to local tax.

If orders are for the sale of exempt items, subsection (b)(5) will have no effect because the transactions will not be subject to local tax.

If the orders are for the sale of items to exempt entities, subsection (b)(5) will have no effect because the transactions will not be subject to local tax.

If the orders are for the sale of natural gas or electricity, local tax will be sourced the same regardless of the text of subsection (b)(5). The sale will be consummated at the point of delivery to the consumer. See §3.334(k)(8) and Tax Code, §321.203(f).

If the orders are for the sale of amusement services, local tax will be sourced the same regardless of the text of subsection (b)(5). The sale will be consummated where the performance or event occurs. See §3.334(k)(1) and Tax Code, §321.203(h).

If the orders are for the sale of cable television service, local tax, if any, will be sourced the same regardless of the text of subsection (b)(5). The sale will be consummated at the point of delivery to the consumer. See §3.334(k)(2), §3.313, and Tax Code, §321.203(j).

If the orders are for the sale of landline telecommunications service, local tax will be sourced the same regardless of the text of subsection (b)(5). The sale will be consummated at the location of the device from which the call or other transmission originates, or the billing address. See §3.334(k)(4) and Tax Code, §321.203(g-1).

If the orders are for the sale of mobile telecommunication services, local tax will be sourced the same regardless of the text of subsection (b)(5). The sale will be consummated at the primary place of use. See §3.334(k)(6) and Tax Code, §321.203(g).

If the orders are for the sale of garbage or other solid waste collection or removal, local tax will be sourced the same regardless of the text of subsection (b)(5). The sale will be consummated at location from which the waste is collected or removed. See §3.334(k)(11) and Tax Code, §321.203(k).

If the orders are for the remodeling, repair, or restoration of nonresidential real property, local tax will be sourced the same regardless of the text of subsection (b)(5). The sale will be consummated at the job site. See §3.334(k)(9) and Tax Code, §321.203(n).

In one circumstance, subsection (b)(5) of §3.334 might change the way Texas retailers with one place of business in Texas will source local sales tax. Prior to the 2020 amendment, §3.334(h)(3) provided in pertinent part (emphasis added):

(3) Consummation of sale. The following rules, taken from Tax Code, §321.203 and §323.203, apply to all sellers engaged in business in this state, regardless of whether they have a place of business in Texas or multiple places of business in the state.

(A) Order placed in person at a seller's place of business in Texas. When a purchaser places an order for a taxable item in person at a seller's place of business in Texas, the sale of that item is consummated at that place of business, regardless of the location where the order is fulfilled, except in the limited circumstances described in subparagraph (F) of this paragraph, concerning qualifying economic development agreements.

(B) Order received at a place of business in Texas, fulfilled at a location that is not a place of business. When an order that is placed over the telephone, through the Internet, or by any means other than in person is received by the seller at a place of business in Texas, and the seller fulfills the order at a location that is not a place of business of the seller in Texas, such as a warehouse or distribution center, the sale is consummated at the place of business at which the order for the taxable item is received.

(C) Order fulfilled at a place of business in Texas. When an order is placed in person at a location that is not a place of business of the seller in this state, such as a kiosk, or when an order is placed over the telephone, through the Internet, or by any means other than in person, and the seller fulfills the order at a location that is a place of business in Texas, the sale is consummated at the place of business where the order is fulfilled.

(D) Order fulfilled within the state at a location that is not a place of business. When an order is received by a seller at any location other than a place of business of the seller in this state, and the seller fulfills the order at a location in Texas that is not a place of business of the seller, then the sale is consummated at the location in Texas to which the order is shipped or delivered, or the location where it is transferred to the purchaser.

(E) Order received outside of the state, fulfilled outside of the state. When an order is received by a seller at a location outside of Texas, and the order is shipped or delivered into a local taxing jurisdiction from a location outside of the state, the sale is not consummated at a location in Texas. However, local use tax is due based upon the location in this state to which the item is shipped or delivered or at which possession of the item is taken by the purchaser as provided in subsection (i) of this section.

Former subsection (h)(3)(B) did not distinguish between website orders received by sales personnel, such as emails, and website orders not received by sales personnel, such as automated shopping cart orders. If a taxpayer relied solely on the rule and did not review the hearings decisions and letter rulings available on the comptroller's STAR system, a taxpayer might conclude that an automated order placed through the Internet could be received at a place of business, whereas proposed subsection (b)(5) explicitly states that orders not received by sales personnel are received at locations that are not places of business of the seller. Thus, under the former rule, if a retailer had a computer server at a single location that was a place of business of the seller in Texas; and if the retailer had no other location in Texas where the retailer received orders; and if the orders were not fulfilled at the place of business of the seller in Texas; and if the orders were not delivered to the same jurisdiction in which they were received; and if the orders were not received from purchasers with direct pay permits; and if the orders were not received from exempt purchasers; and if the purchasers did not issue resale exemption certificates; and if the orders were not for the sale exempt items, natural gas or electricity, amusement services, cable television service, landline telecommunications service, mobile telecommunication services, garbage or other solid waste collection or removal, or the remodeling, repair, or restoration of nonresidential real property; and if the orders were received by the retailer's computer server located at its single place of business in Texas and not by a marketplace provider, then the rule might lead the taxpayer to conclude that the sale would be consummated at the retailer's single place of business

in Texas where the computer server was located. If all of these conditions were met under the 2020 version of the rule (which is carried forward in this proposed rulemaking), the sale would be consummated under subsection (c)(2)(B)(i) at the location in Texas to which the orders are shipped or delivered, or at which the purchasers take possession.

Fiscal note

Brad Reynolds, Chief Revenue Estimator, has determined the following for each year of the first five years that the rule will be in effect.

There will be no additional estimated cost to the state and to local governments expected as a result of enforcing or administering the proposed rule. The proposed amendments explain the manner in which the comptroller intends to apply the consummation statutes. The explanation should lead to greater taxpayer compliance, and less audit resources required to enforce or administer the rule.

There will be no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule amendments. Local governments do not administer the tax, and the comptroller will not be reducing the size of its audit staff as a result of the rule.

There could be loss or increase in revenue to individual local governments as a result of enforcing or administering the rule due to increased compliance with the consummation statutes. A revenue loss to one local government will often but not always be a revenue gain to others. Amounts for individual local governments cannot be estimated.

In general, due both to the number of taxing jurisdictions and lack of pertinent, detailed information regarding the specific circumstances of the myriad businesses reporting local sales and use taxes, estimation of fiscal effects of a proposed law or rule, whether of dollar amounts or merely sign of change, on an individual jurisdiction by jurisdiction basis is infeasible of execution. However, with respect to this rulemaking, it may be noted that some cities with Local Government Code, Chapter 380 agreements involving rebates of local sales and use tax revenues to certain businesses have asserted that the clarifications provided by the rule will result in changes in sourcing and reporting of local taxes by those businesses, with consequent reductions in revenue subject to the agreements, though their assessments of such have not been verified by the comptroller.

Generally, the cities have not provided the data from which they have calculated their asserted lost revenue, have not identified the vendors that would change their method of reporting, and have not identified the circumstances that would require those vendors to change their methods of reporting as a result of the rule. The significance of the assertions cannot be verified.

An exception is the City of San Marcos. During the 2020 rulemaking, the City of San Marcos filed comments claiming that the proposed rule would cause the city to lose $7-8 million in local sales tax revenue generated by a Best Buy call center, with the net effect of economic development incentive revenue loss estimated at $3.4 million, presumably because the balance of the local sales tax would have been rebated to Best Buy under a Chapter 380 agreement. Best Buy also filed comments stating that it created a subsidiary called Best Buy Texas.com LLC and sourced the local tax for all of its Internet and telephone sales to the City of San Marcos. This would mean that if a resident of the City of Houston placed an Internet order from Houston and picked up the item at a Best Buy outlet in Houston, Best Buy would collect local sales tax for the City of San Marcos. However, it appears that the Best Buy website was actually operated by a different Best Buy affiliate, which would make it a marketplace provider as defined in Tax Code, §151.0242(a)(2). Under the marketplace statute, local tax is sourced to the location where the item is shipped or delivered or at which possession is taken by the purchaser. Thus, any loss to the City of San Marcos of local sales tax revenue from the sale to the Houston resident would be the result of compliance with the marketplace statute. And the loss of tax revenue would not be attributable to the rule. The loss resulting from compliance with the statute would occur without regard to whether the proposed rule was adopted.

The City of Round Rock identified Dell as an entity that would change its method of reporting. The comptroller does not have sufficient current information about the company or other affiliates to determine whether the company is or is not complying with the consummation statutes, former consummation rule, the consummation rule adopted in 2020, or the proposed consummation rule.

Most other cities have not identified specific taxpayers or the circumstances that would enable verification of their claims.

Nevertheless, it is conceivable that the clarifications proposed in the rule will cause some vendors to recognize their noncompliance and change their reporting methods, and that these changes could cause shifts in tax revenue between local jurisdictions.

Public benefits and costs

Brad Reynolds, Chief Revenue Estimator, has determined the following for each year of the first five years that the rule will be in effect.

The public will benefit from greater clarity regarding the consummation standards, making compliance easier.

There are no probable additional economic costs to a person required to comply with the rule. There is undoubtedly a burden associated with collecting and remitting local tax. But the burden is imposed by the statute. It is conceivable that the rule may cause some vendors to realize that they are noncompliant. If the vendors come into compliance by changing from single-location reporting to multiple-location reporting, their compliance burden may increase. And if vendors change from multiple-location reporting to single-location reporting, their compliance burden may diminish.

Government growth impact statement

Brad Reynolds, Chief Revenue Estimator, has determined the following for each year of the first five years that the rule will be in effect: The amendment: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the comptroller; will not require an increase or decrease in fees paid to the comptroller; will not create a new regulation; will not expand, limit, or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Local employment impact statement

For the first five years that the rule will be in effect, the effect on local economies and employment, if any, cannot be determined. To the extent that the proposed rule leads to greater awareness

and compliance with the local tax consummation standards, some vendors may change their reporting methods, which might positively or negatively affect the tax revenue of particular local tax jurisdictions. Whether a change in local tax revenue might increase or decrease the provision of local government services to an extent that would affect local economic activity or employment would depend on discretionary actions of the governing body or the electorate of an affected jurisdiction, and cannot be determined.

Fiscal implications for small businesses and rural communities

A statement of fiscal implications for small businesses or rural communities is not required by Government Code, Chapter 2006 if the rule is proposed under Tax Code, Title 2. In this instance, the rule is proposed under both Title 2 (State Taxation) and Title 3 (Local Taxation). The comptroller has determined that the rule will not have an adverse economic effect on small businesses, micro-businesses, or rural communities.

During the 2020 rulemaking, the comptroller received comments that the proposed rule would increase compliance costs of small businesses that would have to switch from origin sourcing to destination sourcing. However, the rule does not cause that result for a small business that has all of its operations under one roof. A small business that does not sell through a marketplace and that has all of its operations at a single location, including sales and fulfillment, will be a "place of business" under the statute, under the 2020 version of the rule, and under the proposed rule. Non-marketplace orders fulfilled from that location will continue to be consummated at that location pursuant to §3.334(c)(1) or (c)(2)(A). Sales of a small business that are through a marketplace are already subject to destination sourcing.

It is conceivable that the rule may cause some vendors, small or large, to realize that they are noncompliant. If the vendors come into compliance by changing from single-location reporting to multiple-location reporting, their compliance burden may increase. And if vendors change from multiple-location reporting to single-location reporting, their compliance burden may diminish.

And, to the extent that the vendors have been reaching the two percent ceiling on local taxes by over-collecting city sales taxes, and the vendors begin correctly reporting, unincorporated rural communities may actually benefit from increased collection of county use tax and special purpose use tax. See Tax Code, §321.205(b) and §3.334(d)(1).

Public hearing

The comptroller will hold a hearing to take public comments, on Monday, October 17, 2022, at 9:00 a.m. in Room 170 of the Stephen F. Austin Building, 1700 Congress Ave., Austin, Texas 78701. Interested persons may sign up to testify beginning at 8:30 a.m. and testimony will be heard on a first come first serve basis. All persons will have 10 minutes to present their testimony and shall also provide their testimony in writing prior to their oral testimony.

Comments

Comments on the proposal may be submitted to Jennifer Burleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528 or to the email address: tp.rule.comments@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

Statutory or other authority under which the rule is proposed to be adopted

Tax Code, §§111.002 (Comptroller's Rule; Compliance; Forfeiture); 321.306 (Comptroller's Rules); 322.203 (Comptroller's Rules); 323.306 (Comptroller's Rules) authorize the comptroller to adopt rules to implement the tax statutes.

Sections or articles of the code affected

Tax Code, §151.0595 (Single Local Tax Rate for Remote Sellers); Tax Code, Chapter 321, Subchapters A, B, C, D, and F; Tax Code, Chapter 322; Tax Code, Chapter 323.

§3.334. Local Sales and Use Taxes.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Cable system--The system through which a cable service provider delivers cable television or bundled cable service, as those terms are defined in §3.313 of this title (relating to Cable Television Service and Bundled Cable Service).

(2) City--An incorporated city, municipality, town, or village.

(3) City sales and use tax--The tax authorized under Tax Code, §321.101(a), including the additional municipal sales and use tax authorized under Tax Code, §321.101(b), the municipal sales and use tax for street maintenance authorized under Tax Code, §327.003, the Type A Development Corporation sales and use tax authorized under Local Government Code, §504.251, the Type B Development Corporation sales and use tax authorized under Local Government Code, §505.251, a sports and community venue project sales and use tax adopted by a city under Local Government Code, §334.081, and a municipal development corporation sales and use tax adopted by a city under Local Government Code, §379A.081. The term does not include the fire control, prevention, and emergency medical services district sales and use tax authorized under Tax Code, §321.106, or the municipal crime control and prevention district sales and use tax authorized under Tax Code, §321.108.

(4) Comptroller's website--The comptroller's [~~agency's~~] website concerning local taxes located at: https://comptroller.texas.gov/taxes/sales/.

(5) County sales and use tax--The tax authorized under Tax Code, §323.101, including a sports and community venue project sales and use tax adopted by a county under Local Government Code, §334.081. The term does not include the county health services sales and use tax authorized under Tax Code, §324.021, the county landfill and criminal detention center sales and use tax authorized under Tax Code, §325.021, or the crime control and prevention district sales and use tax authorized under Tax Code, §323.105.

(6) Drop shipment--A transaction in which an order is received by a seller at one location, but the item purchased is shipped by the seller from another location, or is shipped by the seller's third-party supplier, directly to a location designated by the purchaser.

(7) Engaged in business--This term has the meaning given in §3.286 of this title (relating to Seller's and Purchaser's Responsibilities).

(8) Extraterritorial jurisdiction-An unincorporated area that is contiguous to the corporate boundaries of a city as defined in Local Government Code, §42.021.

(9) Fulfill--To complete an order by transferring possession of a taxable item [~~directly~~] to a purchaser [~~at a Texas~~

~~location~~], or to ship or deliver a taxable item to a location [in Texas] designated by the purchaser. The term does not include receiving or tracking an order, determining shipping costs, managing inventory, or other activities that do not involve the transfer, shipment, or delivery of a taxable item to the purchaser or a location designated by the purchaser.

(10) Itinerant vendor--A seller who travels to various locations for the purpose of receiving orders and making sales of taxable items and who has no place of business in this state. A person who sells items through vending machines is also an itinerant vendor. A salesperson that operates out of a place of business in this state is not an itinerant vendor.

(11) Kiosk--A small stand-alone area or structure:

(A) that is used solely to display merchandise or to submit orders for taxable items from a data entry device, or both;

(B) that is located entirely within a location that is a place of business of another seller, such as a department store or shopping mall; and

(C) at which taxable items are not available for immediate delivery to a purchaser.

(12) Local taxes--Sales and use taxes imposed by any local taxing jurisdiction.

(13) Local taxing jurisdiction--Any of the following:

(A) a city that imposes sales and use tax as provided under paragraph (3) of this subsection;

(B) a county that imposes sales and use tax as provided under paragraph (5) of this subsection;

(C) a special purpose district created under the Special District Local Laws Code or other provisions of Texas law that is authorized to impose sales and use tax by the Tax Code or other provisions of Texas law and as governed by the provisions of Tax Code, Chapters 321 or 323 and other provisions of Texas law; or

(D) a transit authority that imposes sales and use tax as authorized by Transportation Code, Chapters, 451, 452, 453, 457, or 460 and governed by the provisions of Tax Code, Chapter, 322.

(14) Marketplace provider--This term has the meaning given in §3.286 of this title.

(15) Order placed in person--An order placed by a purchaser with the seller while physically present at the seller's place of business regardless of how the seller subsequently enters the order.

(16) Place of business of the seller- general definition--A place of business of the seller must be an [~~An~~] established outlet, office, or location operated by a seller for the purpose of receiving orders for taxable items from persons [~~selling taxable items to those~~] other than employees, independent contractors, and natural persons affiliated with the seller. An "established outlet, office, or location" requires staffing by one or more sales personnel.[~~, where sales personnel of the seller receive three or more orders for taxable items during the calendar year.~~] The term does not include a computer server, Internet protocol address, domain name, website, or software application. The "purpose" element of the definition may be established by proof that the sales personnel of the seller receive three or more orders for taxable items at the facility during the calendar year. Additional criteria for determining when a location is a place of business of the seller are provided in subsection (b) of this section for distribution centers, manufacturing plants, storage yards, warehouses and similar facilities; kiosks; and purchasing offices. An outlet, office, facility, or any location that contracts with a retail or commercial business to process for that business invoices, purchase orders, bills of lading, or other equivalent records onto which sales tax is added, including an office operated for the purpose of buying and selling taxable goods to be used or consumed by the retail or commercial business, is not a place of business of the seller if the comptroller determines that the outlet, office, facility, or location functions or exists to avoid the tax legally due under Tax Code, Chapters 321, 322, and 323 or exists solely to rebate a portion of the tax imposed by those chapters to the contracting business. An outlet, office, facility, or location does not exist to avoid the tax legally due under Tax Code, Chapters 321, 322, and 323 or solely to rebate a portion of the tax imposed by those chapters if the outlet, office, facility, or location provides significant business services, beyond processing invoices, to the contracting business, including logistics management, purchasing, inventory control, or other vital business services.

(17) Purchasing office--An outlet, office, facility, or any location that contracts with a retail or commercial business to process for that business invoices, purchase orders, bills of lading, or other equivalent records onto which sales tax is added, including an office operated for the purpose of buying and selling taxable goods to be used or consumed by the retail or commercial business.

(18) Remote Seller--As defined in §3.286 of this title, a remote seller is a seller engaged in business in this state whose only activity in the state is:

(A) engaging in regular or systematic solicitation of sales of taxable items in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, by means of print, radio, or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system for the purpose of effecting sales of taxable items; or

(B) soliciting orders for taxable items by mail or through other media including the Internet or other media that may be developed in the future.

(19) Seller--This term has the meaning given in §3.286 of this title and also refers to any agent or employee of the seller.

(20) Special purpose district--A local governmental entity authorized by the Texas legislature for a specific purpose, such as crime control, a local library, emergency services, county health services, or a county landfill and criminal detention center.

(21) Storage--This term has the meaning given in §3.346 of this title (relating to Use Tax).

(22) Temporary place of business of the seller--A location operated by a seller for a limited period of time for the purpose of selling and receiving orders for taxable items and where the seller has inventory available for immediate delivery to a purchaser. For example, a person who rents a booth at a weekend craft fair or art show to sell and take orders for jewelry, or a person who maintains a facility at a job site to rent tools and equipment to a contractor during the construction of real property, has established a temporary place of business. A temporary place of business of the seller includes a sale outside of a distribution center, manufacturing plant, storage yard, warehouse, or similar facility of the seller in a parking lot or similar space sharing the same physical address as the facility but not within the walls of the facility.

(23) Transit authority--A metropolitan rapid transit authority (MTA), advanced transportation district (ATD), regional or subregional transportation authority (RTA), city transit department (CTD), county transit authority (CTA), regional mobility authority (RMA) or coordinated county transportation authority created under Transportation Code, Chapters 370, 451, 452, 453, 457, or 460.

(24) Two percent cap--A reference to the general rule that, except as otherwise provided by Texas law and as explained in this section, a seller cannot collect, and a purchaser is not obligated to pay, more than 2.0% of the sales price of a taxable item in total local sales and use taxes for all local taxing jurisdictions.

(25) Use--This term has the meaning given in §3.346 of this title.

(26) Use tax--A tax imposed on the storage, use or other consumption of a taxable item in this state.

(b) Determining the place of business of a seller.

(1) Distribution centers, manufacturing plants, storage yards, warehouses, and similar facilities.

(A) A distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller for the purpose of selling taxable items where sales personnel of the seller receive three or more orders for taxable items during the calendar year from persons other than employees, independent contractors, and natural persons affiliated with the seller is a place of business of the seller. The forwarding of previously received orders to the facility for fulfilment does not make the facility a place of business.

(B) If a location that is a place of business of the seller, such as a sales office, is in the same building as a distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller, then the entire facility is a place of business of the seller.

(2) Kiosks. A kiosk is not a place of business of the seller for the purpose of determining where a sale is consummated for local tax purposes. A seller who owns or operates a kiosk in Texas is, however, engaged in business in this state as provided in §3.286 of this title.

(3) Purchasing offices.

(A) A purchasing office is not a place of business of the seller if the purchasing office exists solely to rebate a portion of the local sales and use tax imposed by Tax Code, Chapters 321, 322, or 323 to a business with which it contracts; or if the purchasing office functions or exists to avoid the tax legally due under Tax Code, Chapters 321, 322, or 323. A purchasing office does not exist solely to rebate a portion of the local sales and use tax or to avoid the tax legally due under Tax Code, Chapters 321, 322, or 323 if the purchasing office provides significant business services to the contracting business beyond processing invoices, including logistics management, purchasing, inventory control, or other vital business services.

(B) In making a determination under subparagraph (A) of this paragraph, as to whether a purchasing office provides significant business services to the contracting business beyond processing invoices, the comptroller will compare the total value of the other business services to the value of processing invoices. If the total value of the other business services, including logistics management, purchasing, inventory control, or other vital business services, is less than the value of the service to process invoices, then the purchasing office will be presumed not to be a place of business of the seller.

(C) If the comptroller determines that a purchasing office is not a place of business of the seller, the sale of any taxable item is deemed to be consummated at the place of business of the seller from whom the purchasing office purchased the taxable item for resale and local sales and use taxes are due according to the following rules.

(i) When taxable items are purchased from a Texas seller, local sales taxes are due based on the location of the seller's place of business where the sale is deemed to be consummated, as determined in accordance with subsection (c) of this section.

(ii) When the sale of a taxable item is deemed to be consummated at a location outside of this state, local use tax is due based on the location where the items are first stored, used or consumed by the entity that contracted with the purchasing office in accordance with subsection (d) of this section.

(4) An order that is received by a salesperson who is not at a place of business of the seller when the salesperson receives the order is treated as being received at the location from which the salesperson operates. Examples include orders that a salesperson receives [~~Orders received by sales personnel who are not at a place of business of the seller in Texas when they receive the order, including orders received~~] by mail, telephone, including Voice over Internet Protocol and cellular phone calls, facsimile, and email while traveling. The [~~This type of order is treated as being received at the~~] location from which the salesperson operates[~~, that~~] is[~~,~~] the principal fixed location where the salesperson conducts work-related activities. The location from which a salesperson operates will be a place of business of the seller only if the location meets the definition of a "place of business of a seller" in subsection (a)(16) of this section on its own, without regard to the orders imputed to that location by this paragraph. [~~Orders received prior to October 1, 2021, may also be treated as being received at the outlet, office, or location operated by the seller that serves as a base of operations or that provides administrative support to the salesperson, and these locations will be treated as places of business of the seller for purposes of subsection (c) of this section.~~]

(5) An order that is not received by a salesperson is received at a location that is not a place of business of the seller. Examples are orders received by a computer server through a shopping cart software program and orders received by an automated telephone ordering system. [~~Orders not received by sales personnel, including orders received by a shopping website or shopping software application. Effective October 1, 2021, these orders are received at locations that are not places of business of the seller.~~]

(c) Local sales tax- Consummation of sale - determining the local taxing jurisdictions to which sales tax is due. Except for the special rules applicable to remote sellers in subsection (i)(3) of this section, direct payment permit purchases in subsection (j) of this section, and certain taxable items, including taxable items sold by a marketplace provider, as provided in subsection (k) of this section, each sale of a taxable item is consummated at the location indicated by the provisions of this subsection. The following rules, taken from Tax Code, §321.203 and §323.203, apply to all sellers engaged in business in this state, regardless of whether they have no place of business in Texas, a single place of business in Texas, or multiple places of business in the state.

(1) Consummation of sale- order received at a place of business of the seller in Texas.

(A) Order placed in person. Except as provided by paragraph (3) of this subsection, when an order for a taxable item is placed in person at a seller's place of business in Texas, including at a temporary place of business of the seller in Texas, the sale of that item is consummated at that place of business of the seller, regardless of the location where the order is fulfilled.

(B) Order not placed in person.

(i) Order fulfilled at a place of business of the seller in Texas. When an order is received at a place of business of the seller in Texas and is fulfilled at a place of business of the seller in Texas, the sale is consummated at the place of business where the order is fulfilled.

(ii) Order not fulfilled at a place of business of the seller in Texas. When an order is received at a place of business of the seller in Texas and is fulfilled at a location that is not a place of business of the seller in Texas, the sale is consummated at the place of business where the order is received.

(2) Consummation of sale- order not received at a place of business of the seller in Texas.

(A) Order fulfilled at a place of business of the seller in Texas. When an order is received at a location that is not a place of business of the seller in Texas or is received outside of Texas, and is fulfilled from a place of business of the seller in Texas, the sale is consummated at the place of business where the order is fulfilled.

(B) Order not fulfilled from a place of business of the seller in Texas.

(i) Order fulfilled in Texas. When an order is received at a location that is not a place of business of the seller in Texas and is fulfilled from a location in Texas that is not a place of business of the seller, the sale is consummated at the location in Texas to which the order is shipped or delivered, or at which the purchaser of the item takes possession.

(ii) Order not fulfilled in Texas. When an order is received by a seller at a location that is not a place of business of the seller in Texas [~~outside of Texas or by a remote seller~~], and is fulfilled from a location outside of Texas, the sale is not consummated in Texas. However, a use is considered to be consummated at the first point in this state where the item is stored, used, or consumed after the interstate transit has ceased. A taxable item delivered to a point in this state is presumed to be used for storage, use, or consumption at that point until the contrary is established. Local use tax should be collected as provided in subsection (d) of this section. [~~local use tax is due based upon the location in this state to which the item is shipped or delivered or at which the purchaser of the item takes possession as provided in subsection (d) of this section.~~] Except as provided in subsection (i)(3) of this section, a remote seller required to collect state use tax under §3.286(b)(2) of this title must also collect local use tax [~~based on the location to which the item is shipped or delivered or at which the purchaser of the item takes possession~~].

(3) Exception for qualifying economic development agreements entered into before January 1, 2009, pursuant to Tax Code, §321.203(c-4) - (c-5) or §323.203(c-4) - (c-5). This paragraph is effective until September 1, 2024. If applicable, the local sales tax due on the sale of a taxable item is based on the location of the qualifying warehouse, which is a place of business of the seller, from which the item is shipped or delivered or at which the purchaser of the item takes possession.

(4) Local sales taxes are due to each local taxing jurisdiction with sales tax in effect where the sale is consummated. Local use tax may also be due if the total amount of local sales taxes due does not reach the two percent cap, and the item purchased is shipped or delivered to a location in one or more different local taxing jurisdictions, as provided in subsection (d) of this section.

(5) Multiple special purpose district taxes, multiple transit authority sales taxes, or a combination of the two may apply to a single transaction. If the sale of a taxable item is consummated at a location within the boundaries of multiple special purpose districts or transit authorities, local sales tax is owed to each of the jurisdictions in effect at that location. For example, a place of business of the seller located in the city of San Antonio is within the boundaries of both the San Antonio Advanced Transportation District and the San Antonio Metropolitan Transit Authority, and the seller is required to collect sales tax for both transit authorities. Similarly, a place of business of the seller in Flower Mound is located within the boundaries of two special purpose districts, the Flower Mound Crime Control District and the Flower Mound Fire Control District, and the seller is responsible for collecting sales tax for both special purpose districts.

(6) Itinerant vendors; vending machines.

(A) Itinerant vendors. Sales made by itinerant vendors are consummated at, and itinerant vendors must collect sales tax based upon, the location where the item is delivered or at which the purchaser of the item takes possession. Itinerant vendors do not have any responsibility to collect use tax.

(B) Vending machines. Sales of taxable items made from a vending machine are consummated at the location of the vending machine. See §3.293 of this title (relating to Food; Food Products; Meals; Food Service) for more information about vending machine sales.

(d) Local use tax. The provisions addressing the imposition of state use tax in §3.346 of this title also apply to the imposition of local use tax. For example, consistent with §3.346(e) of this title, all taxable items that are shipped or delivered to a location in this state that is within the boundaries of a local taxing jurisdiction are presumed to have been purchased for use in that local taxing jurisdiction as well as presumed to have been purchased for use in the state.

(1) General rules.

(A) When local use taxes are due in addition to local sales taxes as provided by subsection (c) of this section, all applicable use taxes must be collected or accrued in the following order until the two percent cap is reached: city, county, special purpose district, and transit authority. If more than one special purpose district use tax is due, all such taxes are to be collected or accrued before any transit authority use tax is collected or accrued. See subparagraphs (D) and (E) of this paragraph.

(B) If a local use tax cannot be collected or accrued at its full rate without exceeding the two percent cap, the seller cannot collect it, or any portion of it, and the purchaser is not responsible for accruing it.

(C) If a seller collects a local sales tax on an item, or a purchaser accrues a local sales tax on an item, a use tax for the same type of jurisdiction is not due on the same item. For example, after a city sales tax has been collected or accrued for an item, no use tax is due to that same or a different city on that item, but use tax may be due to a county, special purpose district, or transit authority. Similarly, if one or more special purpose district sales taxes have been collected or accrued for an item, no special purpose district use tax is due on that item, and if one or more transit authority sales taxes have been collected or accrued for an item, no transit authority use tax is due on that item.

(D) Collection or accrual of use tax for multiple special purpose districts. If more than one special purpose district use tax is in effect at the location where use of an item occurs, the special purpose district taxes are due in the order of their effective dates, beginning with the earliest effective date, until the two percent cap is met. The effective dates of all special purpose district taxes are available on the comptroller's website. However, if the collection or accrual of use tax for the district with the earliest effective date would exceed the two percent cap, the tax for that district is not due and the seller or purchaser should determine, following the criteria in subparagraphs (A) - (C) of this paragraph, whether use tax is due for the district that next became effective.

(i) If the competing special purpose district taxes became effective on the same date, the special purpose district taxes are due in the order of the earliest date for which the election in which the district residents authorized the imposition of sales and use tax by the district was held.

(ii) If the elections to impose the local taxes were held on the same date, the special purpose district taxes are due in the order of the earliest date for which the enabling legislation under which each district was created became effective.

(E) Collection or accrual of use tax for multiple transit authorities. If more than one transit authority use tax is in effect at the location where use of an item occurs, and the two percent cap has not been met, the transit authority taxes are due in the order of their effective dates, beginning with the earliest effective date, until the two percent cap is met. The effective dates of all transit authority taxes are available on the comptroller's website. However, if the collection or accrual of use tax for the authority with the earliest effective date would exceed the two percent cap, the tax for that authority is not due and the seller or purchaser should determine, following the criteria in subparagraphs (A)- (D) of this paragraph, whether use tax is due for the authority that next became effective.

(i) If the competing transit authorities became effective on the same date, the transit authority taxes are due in the order of the earliest date for which the election in which the authority residents authorized the imposition of sales and use tax by the authority was held.

(ii) If the elections to impose local taxes were held on the same date, the transit authority use taxes are due in the order of the earliest date for which the enabling legislation under which each authority was created became effective.

(2) General use tax rules applied to specific situations. The following fact patterns explain how local use tax is to be collected or accrued and remitted to the comptroller based on, and subject to, the general rules in paragraph (1) of this subsection.

(A) Sale consummated outside the state, item delivered from outside the state or from a location in Texas that is not operated by the seller - local use tax due. Except as provided in subsection (i)(3) of this section, if a sale is consummated outside of this state according to the provisions of subsection (c) of this section, and the item purchased is either shipped or delivered to a location in this state as designated by the purchaser from a location outside of the state, or if the order is drop shipped directly to the purchaser from a third-party supplier, local use tax is owed based upon the location in this state to which the order is shipped or delivered or at which the purchaser of the item takes possession. The seller is responsible for collecting the local use tax due on the sale. If the seller does not collect the local use taxes due on the sale, the purchaser is responsible for accruing such taxes and remitting them directly to the comptroller according to the provisions in paragraph (1) of this subsection. For example, if an order for a taxable item is received by a seller at a location outside of Texas, and the order is shipped to the purchaser from a location outside of the state, local use tax is due based upon the location to which the order is shipped or delivered or at which the purchaser of the item takes possession.

(B) Sale consummated in Texas outside a local taxing jurisdiction, item delivered into one or more local taxing jurisdictions - local use tax due. If a sale is consummated at a location in Texas that is outside of the boundaries of any local taxing jurisdiction according to the provisions of subsection (c) of this section, and the order is shipped or delivered to the purchaser at a location in this state that is within the boundaries of one or more local taxing jurisdictions, local use tax is due based on the location to which the items are shipped or delivered or at which the purchaser of the item takes possession. The seller is responsible for collecting the local use taxes due on the sale, regardless of the location of the seller in Texas. If the seller fails to collect any local use taxes due, the purchaser is responsible for accruing such taxes and remitting them directly to the comptroller.

(C) Sale consummated in any local taxing jurisdictions imposing less than 2.0% in total local taxes - local sales taxes and use taxes due. If a sale is consummated at a location in Texas where the total local sales tax rate imposed by the taxing jurisdictions in effect at that location does not equal 2.0% according to the provisions of subsection (c) of this section, and the item is shipped or delivered to the purchaser at a location in this state that is inside the boundaries of a different local taxing jurisdiction, additional local use tax may be due based on the location to which the order is shipped or delivered or at which the purchaser of the item takes possession, subject to the two percent cap. The seller is responsible for collecting any additional local use taxes due on the sale, regardless of the location of the seller in Texas. See subsection (i) of this section. If the seller fails to collect the additional local use taxes due, the purchaser is responsible for accruing such taxes and remitting them directly to the comptroller.

(i) Example one - if an order is received in person at a place of business of the seller, such that the sale is consummated at the location where the order is received as provided under subsection (c)(1)(A) of this section, and the local sales tax due on the sale does not meet the two percent cap, additional local use taxes are due based on the location to which the order is shipped or delivered or at which the purchaser of the item takes possession, subject to the provisions in paragraph (1) of this subsection.

(ii) Example two - if a seller receives an order for a taxable item at a seller's place of business in Texas, and the seller ships or delivers the item from an out-of-state location to a location in this state as designated by the purchaser, local sales tax is due based upon the location of the place of business of the seller where the order is received. If the local sales tax due on the item does not meet the two percent cap, use taxes, subject to the provisions in paragraph (1) of this subsection, are due based upon the location where the items are shipped or delivered or at which the purchaser of the item takes possession.

(e) Effect of other law.

(1) Tax Code, Title 2, Subtitles A (General Provisions) and B (Enforcement and Collection), Tax Code, Chapter 141 (Multistate Tax Compact) and Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax) apply to transactions involving local taxes. Related sections of this title and comptroller rulings shall also apply with respect to local taxes. This includes authorities such as court cases and federal law that affect whether an item is taxable or is excluded or exempt from taxation.

(2) Permits, exemption certificates, and resale certificates required by Tax Code, Chapter 151, shall also satisfy the requirements for collecting and remitting local taxes, unless otherwise indicated by this section or other sections of this title. For example, see subsection (n) of this section concerning prior contract exemptions.

(3) Any provisions in this section or other sections of this title related to a seller's responsibilities for collecting and remitting local taxes to the comptroller shall also apply to a purchaser if the seller does not collect local taxes that are due. The comptroller may proceed against the seller or purchaser for the local tax owed by either.

(f) Tax rates. Except as otherwise provided by law, no local governmental entity may adopt or increase a sales and use tax if, as a result of the adoption or increase of the tax, the combined rate of all sales and use taxes imposed by local taxing jurisdictions having territory in

the local governmental entity would exceed 2.0% at any location within the boundaries of the local governmental entity's jurisdiction. The following are the local tax rates that may be adopted.

(1) Cities. Cities may impose sales and use tax at a rate of up to 2.0%.

(2) Counties. Counties may impose sales and use tax at rates ranging from 0.5% to 1.5%.

(3) Special purpose districts. Special purpose districts may impose sales and use tax at rates ranging from 0.125% to 2.0%.

(4) Transit authorities. Transit authorities may impose sales and use tax at rates ranging from 0.25% to 1.0%.

(g) Jurisdictional boundaries, combined areas, and city tax imposed through strategic partnership agreements.

(1) Jurisdictional boundaries.

(A) City boundaries. City taxing jurisdictional boundaries cannot overlap one another and a city cannot impose a sales and use tax in an area that is already within the jurisdiction of another city.

(B) County boundaries. County tax applies to all locations within that county.

(C) Special purpose district and transit authority boundaries. Special purpose districts and transit authorities may cross or share boundaries with other local taxing jurisdictions and may encompass, in whole or in part, other local taxing jurisdictions, including cities and counties. A geographic location or address in this state may lie within the boundaries of more than one special purpose district or more than one transit authority.

(D) Extraterritorial jurisdictions. Except as otherwise provided by paragraph (3) of this subsection concerning strategic partnership agreements and subsection (l)(5) of this section concerning the City of El Paso and Fort Bliss, city sales and use tax does not apply to taxable sales that are consummated outside the boundaries of the city, including sales made in a city's extraterritorial jurisdiction. However, an extraterritorial jurisdiction may lie within the boundaries of a special purpose district, transit authority, county, or any combination of the three, and the sales and use taxes for those jurisdictions would apply to those sales.

(2) Combined areas. A combined area is an area where the boundaries of a city overlap the boundaries of one or more other local taxing jurisdictions as a result of an annexation of additional territory by the city, and where, as the result of the imposition of the city tax in the area in addition to the local taxes imposed by the existing taxing jurisdictions, the combined local tax rate would exceed 2.0%. The comptroller shall make accommodations to maintain a 2.0% rate in any combined area by distributing the 2.0% tax revenue generated in these combined areas to the local taxing jurisdictions located in the combined areas as provided in Tax Code, §321.102 or Health and Safety Code, §775.0754. Combined areas are identified on the comptroller's website. Sellers engaged in transactions on which local sales or use taxes are due in a combined area, or persons who must self-accrue and remit tax directly to the comptroller, must use the combined area local code when reporting the tax rather than the codes for the individual city, county, special purpose districts, or transit authorities that make up the combined area.

(3) City tax imposed through strategic partnership agreements.

(A) The governing bodies of a district, as defined in Local Government Code, §43.0751, and a city may enter into a limited-purpose annexation agreement known as a strategic partnership agreement. Under this agreement, the city may impose sales and use tax within all or part of the boundaries of a district. Areas within a district that are annexed for this limited purpose are treated as though they are within the boundaries of the city for purposes of city sales and use tax.

(B) Counties, transit authorities, and special purpose districts may not enter into strategic partnership agreements. Sales and use taxes imposed by those taxing jurisdictions do not apply in the limited-purpose annexed area as part of a strategic partnership agreement between a city and an authorized district. However, a county, special purpose district, or transit authority sales and use tax, or any combination of these three types of taxes, may apply at locations included in a strategic partnership agreement between a city and an authorized district if the tax is imposed in that area by the applicable jurisdiction as allowed under its own controlling authorities.

(C) Prior to September 1, 2011, the term "district" was defined in Local Government Code, §43.0751 as a municipal utility district or a water control and improvement district. The definition was amended effective September 1, 2011, to mean a conservation and reclamation district operating under Water Code, Chapter 49.

(h) Places of business of the seller and job sites crossed by local taxing jurisdiction boundaries.

(1) Places of business of the seller crossed by local taxing jurisdiction boundaries. If a place of business of the seller is crossed by one or more local taxing jurisdiction boundaries so that a portion of the place of business of the seller is located within a taxing jurisdiction and the remainder of the place of business of the seller lies outside of the taxing jurisdiction, tax is due to the local taxing jurisdictions in which the sales office is located. If there is no sales office, sales tax is due to the local taxing jurisdictions in which any cash registers are located.

(2) Job sites.

(A) Residential repair and remodeling; new construction of an improvement to realty. When a contractor is improving real property under a separated contract, and the job site is crossed by the boundaries of one or more local taxing jurisdictions, the local taxes due on any separately stated charges for taxable items incorporated into the real property must be allocated to the local taxing jurisdictions based on the total square footage of the real property improvement located within each jurisdiction, including the square footage of any standalone structures that are part of the construction, repair, or remodeling project. For more information about tax due on materials used at residential and new construction job sites, refer to §3.291 of this title (relating to Contractors).

(B) Nonresidential real property repair and improvement. When taxable services are performed to repair, remodel, or restore nonresidential real property, including a pipeline, transmission line, or parking lot, that is crossed by the boundaries of one or more local taxing jurisdictions, the local taxes due on the taxable services, including materials and any other charges connected to the services performed, must be allocated among the local taxing jurisdictions based upon the total mileage or square footage, as appropriate, of the repair, remodeling, or restoration project located in each jurisdiction. For more information about tax due on materials used at nonresidential real property repair and remodeling job sites, refer to §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance).

(i) Sellers' and purchasers' responsibilities for collecting or accruing local taxes.

(1) Sale consummated in Texas; seller responsible for collecting local sales taxes and applicable local use taxes. When a sale

of a taxable item is consummated at a location in Texas as provided by subsection (c) of this section, the seller must collect each local sales tax in effect at the location. If the total rate of local sales tax due on the sale does not reach the two percent cap, and the seller ships or delivers the item into another local taxing jurisdiction, then the seller is required to collect additional local use taxes due, if any, based on the location to which the item is shipped or delivered or at which the purchaser of the item takes possession, regardless of the location of the seller in Texas. For more information regarding local use taxes, refer to subsection (d) of this section.

(2) Out-of-state sale; seller engaged in business in Texas. Except as provided in paragraph (3) of this subsection, when a sale is not consummated in Texas, a seller who is engaged in business in this state is required to collect and remit local use taxes due, if any, on orders of taxable items shipped or delivered at the direction of the purchaser into a local taxing jurisdiction in this state based upon the location in this state to which the item is shipped or delivered or at which the purchaser of the item takes possession as provided in subsection (d) of this section.

(3) Local use tax rate for remote sellers.

(A) A remote seller required to collect and remit one or more local use taxes in connection with a sale of a taxable item must compute the amount using:

(i) the combined tax rate of all applicable local use taxes based on the location to which the item is shipped or delivered or at which the purchaser of the item takes possession; or

(ii) at the remote seller's election, the single local use tax rate published in the *Texas Register*.

(B) A remote seller that is storing tangible personal property in Texas to be used for fulfillment at a facility of a marketplace provider that has certified that it will assume the rights and duties of a seller with respect to the tangible personal property, as provided for in §3.286 of this title, may elect the single local use tax rate under subparagraph (A)(ii) of this paragraph.

(C) Notice to the comptroller of election and revocation of election.

(i) Before using the single local use tax rate, a remote seller must notify the comptroller of its election using a form prescribed by the comptroller. A remote seller may also notify the comptroller of the election on its use tax permit application form. The remote seller must use the single local use tax rate for all of its sales of taxable items until the election is revoked as provided in clause (ii) of this subparagraph.

(ii) A remote seller may revoke its election by filing a form prescribed by the comptroller. If the comptroller receives the notice by October 1, the revocation will be effective January 1 of the following year. If the comptroller receives the notice after October 1, the revocation will be effective January 1 of the year after the following year. For example, a remote seller must notify the comptroller by October 1, 2020, for the revocation to be effective January 1, 2021. If the comptroller receives the revocation on November 1, 2020, the revocation will be effective January 1, 2022.

(D) Single local use tax rate.

(i) The single local use tax rate in effect for the period beginning October 1, 2019, and ending December 31, 2019, is 1.75%.

(ii) The single local use tax rate in effect for the period beginning January 1, 2020, and ending December 31, 2020, is 1.75%.

(E) Annual publication of single local use tax rate. Before the beginning of a calendar year, the comptroller will publish notice of the single local use tax rate in the Texas Register that will be in effect for that calendar year.

(F) Calculating the single local use tax rate. The single local use tax rate effective in a calendar year is equal to the estimated average rate of local sales and use taxes imposed in this state during the preceding state fiscal year. As soon as practicable after the end of a state fiscal year, the comptroller must determine the estimated average rate of local sales and use taxes imposed in this state during the preceding state fiscal year by:

(i) dividing the total amount of net local sales and use taxes remitted to the comptroller during the state fiscal year by the total amount of net state sales and use tax remitted to the comptroller during the state fiscal year;

(ii) multiplying the amount computed under clause (i) of this subparagraph by the rate provided in Tax Code, §151.051; and

(iii) rounding the amount computed under clause (ii) of this subparagraph to the nearest .0025.

(G) Direct refund. A purchaser may request a refund based on local use taxes paid in a calendar year for the difference between the single local use tax rate paid by the purchaser and the amount the purchaser would have paid based on the combined tax rate for all applicable local use taxes. Notwithstanding the refund requirements under §3.325(a)(1) of this title (relating to Refunds and Payments Under Protest), a non-permitted purchaser may request a refund directly from the comptroller for the tax paid in the previous calendar year, no earlier than January 1 of the following calendar year within the statute of limitation under Tax Code, 111.104 (Refunds).

(H) Marketplace providers. Notwithstanding subparagraph (A) of this paragraph, marketplace providers may not use the single local use tax rate and must compute the amount of local use tax to collect and remit using the combined tax rate of all applicable local use taxes.

(4) Purchaser responsible for accruing and remitting local taxes if seller fails to collect.

(A) If a seller does not collect the state sales tax, any applicable local sales taxes, or both, on a sale of a taxable item that is consummated in Texas, then the purchaser is responsible for filing a return and paying the tax. The local sales taxes due are based on the location in this state where the sale is consummated as provided in subsection (c) of this section.

(B) A purchaser who buys an item for use in Texas from a seller who does not collect the state use tax, any applicable local use taxes, or both, is responsible for filing a return and paying the tax. The local use taxes due are based on the location where the item is first stored, used, or consumed by the purchaser.

(C) For more information about how to report and pay use tax directly to the comptroller, see §3.286 of this title.

(5) Local tax is due on the sales price of a taxable item, as defined in Tax Code, §151.007, in the report period in which the taxable item is purchased or the period in which the taxable item is first stored, used, or otherwise consumed in a local taxing jurisdiction.

(6) A purchaser is not liable for additional local use tax if the purchaser pays local use tax using the rate elected by an eligible remote seller according to paragraph (3) of this subsection. The remote seller must be identified on the comptroller's website as electing to use the single local use tax rate. A purchaser must verify that the remote seller is listed on the comptroller's website. If the remote seller is not listed on the comptroller's website, the purchaser will be liable for additional use tax due in accordance to paragraph (4) of this subsection.

(j) Items purchased under a direct payment permit.

(1) When taxable items are purchased under a direct payment permit, local use tax is due based upon the location where the permit holder first stores the taxable items, except that if the taxable items are not stored, then local use tax is due based upon the location where the taxable items are first used or otherwise consumed by the permit holder.

(2) If, in a local taxing jurisdiction, storage facilities contain taxable items purchased under a direct payment exemption certificate and at the time of storage it is not known whether the taxable items will be used in Texas, then the taxpayer may elect to report the use tax either when the taxable items are first stored in Texas or are first removed from inventory for use in Texas, as long as use tax is reported in a consistent manner. See also §3.288(i) of this title (relating to Direct Payment Procedures and Qualifications) and §3.346(g) of this title.

(3) If local use tax is paid on stored items that are subsequently removed from Texas before they are used, the tax may be recovered in accordance with the refund and credit provisions of §3.325 of this title and §3.338 of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers).

(k) Special rules for certain taxable goods and services. Sales of the following taxable goods and services are consummated at, and local tax is due based upon, the location indicated in this subsection.

(1) Amusement services. Local tax is due based upon the location where the performance or event occurs. For more information on amusement services, refer to §3.298 of this title (relating to Amusement Services).

(2) Cable services. When a service provider uses a cable system to provide cable television or bundled cable services to customers, local tax is due as provided for in §3.313 of this title. When a service provider uses a satellite system to provide cable services to customers, no local tax is due on the service in accordance with the Telecommunications Act of 1996, §602.

(3) Florists. Local sales tax is due on all taxable items sold by a florist based upon the location where the order is received, regardless of where or by whom delivery is made. Local use tax is not due on deliveries of taxable items sold by florists. For example, if the place of business of the florist where an order is taken is not within the boundaries of any local taxing jurisdiction, no local sales tax is due on the item and no local use tax is due regardless of the location of delivery. If a Texas florist delivers an order in a local taxing jurisdiction at the instruction of an unrelated florist, and if the unrelated florist did not take the order within the boundaries of a local taxing jurisdiction, local use tax is not due on the delivery. For more information about florists' sales and use tax obligations, refer to §3.307 of this title (relating to Florists).

(4) Landline telecommunications services. Local taxes due on landline telecommunications services are based upon the location of the device from which the call or other transmission originates. If the seller cannot determine where the call or transmission originates, local taxes due are based on the address to which the service is billed. For more information, refer to §3.344 of this title (relating to Telecommunications Services).

(5) Marketplace provider sales. Local taxes are due on sales of taxable items through a marketplace provider based on the location in this state to which the item is shipped or delivered or at which the purchaser takes possession. For more information, refer to §3.286 of this title.

(6) Mobile telecommunications services. Local taxes due on mobile telecommunications services are based upon the location of the customer's place of primary use as defined in §3.344(a)(8) of this title, and local taxes are to be collected as indicated in §3.344(h) of this title.

(7) Motor vehicle parking and storage. Local taxes are due based on the location of the space or facility where the vehicle is parked. For more information, refer to §3.315 of this title (relating to Motor Vehicle Parking and Storage).

(8) Natural gas and electricity. Any local city and special purpose taxes due are based upon the location where the natural gas or electricity is delivered to the purchaser. As explained in subsection (l)(1) of this section, residential use of natural gas and electricity is exempt from all county sales and use taxes and all transit authority sales and use taxes, most special purpose district sales and use taxes, and many city sales and use taxes. A list of the cities and special purpose districts that do impose, and those that are eligible to impose, local sales and use tax on residential use of natural gas and electricity is available on the comptroller's website. For more information, also refer to §3.295 of this title (relating to Natural Gas and Electricity).

(9) Nonresidential real property repair and remodeling services. Local taxes are due on services to remodel, repair, or restore nonresidential real property based on the location of the job site where the remodeling, repair, or restoration is performed. See also subsection (h)(2)(B) of this section and §3.357 of this title.

(10) Residential real property repair and remodeling and new construction of a real property improvement performed under a separated contract. When a contractor constructs a new improvement to realty pursuant to a separated contract or improves residential real property pursuant to a separated contract, the sale is consummated at the job site at which the contractor incorporates taxable items into the customer's real property. See also subsection (h)(2)(A) of this section and §3.291 of this title.

(11) Waste collection services. Local taxes are due on garbage or other solid waste collection or removal services based on the location at which the waste is collected or from which the waste is removed. For more information, refer to §3.356 of this title (relating to Real Property Service).

(l) Special exemptions and provisions applicable to individual jurisdictions.

(1) Residential use of natural gas and electricity.

(A) Mandatory exemptions from local sales and use tax. Residential use of natural gas and electricity is exempt from most local sales and use taxes. Counties, transit authorities, and most special purpose districts are not authorized to impose sales and use tax on the residential use of natural gas and electricity. Pursuant to Tax Code, §321.105, any city that adopted a local sales and use tax effective October 1, 1979, or later is prohibited from imposing tax on the residential use of natural gas and electricity. See §3.295 of this title.

(B) Imposition of tax allowed in certain cities. Cities that adopted local sales tax prior to October 1, 1979, may, in accordance with the provisions in Tax Code, §321.105, choose to repeal the exemp-

tion for residential use of natural gas and electricity. The comptroller's website provides a list of cities that impose tax on the residential use of natural gas and electricity, as well as a list of those cities that do not currently impose the tax, but are eligible to do so.

(C) Effective January 1, 2010, a fire control, prevention, and emergency medical services district organized under Local Government Code, Chapter 344 that imposes sales tax under Tax Code, §321.106, or a crime control and prevention district organized under Local Government Code, Chapter 363 that imposes sales tax under Tax Code, §321.108, that is located in all or part of a municipality that imposes a tax on the residential use of natural gas and electricity as provided under Tax Code, §321.105 may impose tax on residential use of natural gas and electricity at locations within the district. A list of the special purpose districts that impose tax on residential use of natural gas and electricity and those districts eligible to impose the tax that do not currently do so is available on the comptroller's website.

(2) Telecommunication services. Telecommunications services are exempt from all local sales taxes unless the governing body of a city, county, transit authority, or special purpose district votes to impose sales tax on these services. However, since 1999, under Tax Code, §322.109(d), transit authorities created under Transportation Code, Chapter 451 cannot repeal the exemption unless the repeal is first approved by the governing body of each city that created the local taxing jurisdiction. The local sales tax is limited to telecommunications services occurring between locations within Texas. See §3.344 of this title. The comptroller's website provides a list of local taxing jurisdictions that impose tax on telecommunications services.

(3) Emergency services districts.

(A) Authority to exclude territory from imposition of emergency services district sales and use tax. Pursuant to the provisions of Health and Safety Code, §775.0751(c-1), an emergency services district wishing to enact a sales and use tax may exclude from the election called to authorize the tax any territory in the district where the sales and use tax is then at 2.0%. The tax, if authorized by the voters eligible to vote on the enactment of the tax, then applies only in the portions of the district included in the election. The tax does not apply to sales made in the excluded territories in the district and sellers in the excluded territories should continue to collect local sales and use taxes for the local taxing jurisdictions in effect at the time of the election under which the district sales and use tax was authorized as applicable.

(B) Consolidation of districts resulting in sales tax sub-districts. Pursuant to the provisions of Health and Safety Code, §775.018(f), if the territory of a district proposed under Health and Safety Code, Chapter 775 overlaps with the boundaries of another district created under that chapter, the commissioners court of each county and boards of the counties in which the districts are located may choose to create a consolidated district in the overlapping territory. If two districts that want to consolidate under Health and Safety Code, §775.024 have different sales and use tax rates, the territory of the former districts located within the consolidated area will be designated as sub-districts and the sales tax rate within each sub-district will continue to be imposed at the rate the tax was imposed by the former district that each sub-district was part of prior to the consolidation.

(4) East Aldine Management District.

(A) Special sales and use tax zones within district; separate sales and use tax rate. As set out in Special District Local Laws Code, §3817.154(e) and (f), the East Aldine Management District board may create special sales and use tax zones within the boundaries of the District and, with voter approval, enact a special sales and use tax rate in each zone that is different from the sales and use tax rate imposed in the rest of the district.

(B) Exemptions from special zone sales and use tax. The sale, production, distribution, lease, or rental of; and the use, storage, or other consumption within a special sales and use tax zone of; a taxable item sold, leased, or rented by the entities identified in clauses (i)- (vi) of this subparagraph are exempt from the special zone sales and use tax. State and all other applicable local taxes apply unless otherwise exempted by law. The special zone sales and use tax exemption applies to:

(i) a retail electric provider as defined by Utilities Code, §31.002;

(ii) an electric utility or a power generation company as defined by Utilities Code, §31.002;

(iii) a gas utility as defined by Utilities Code, §101.003 or §121.001, or a person who owns pipelines used for transportation or sale of oil or gas or a product or constituent of oil or gas;

(iv) a person who owns pipelines used for the transportation or sale of carbon dioxide;

(v) a telecommunications provider as defined by Utilities Code, §51.002; or

(vi) a cable service provider or video service provider as defined by Utilities Code, §66.002.

(5) Imposition of city sales tax and transit tax on certain military installations; El Paso and Fort Bliss. Pursuant to Tax Code, §321.1045 (Imposition of Sales and Use Tax in Certain Federal Military Installations), for purposes of the local sales and use tax imposed under Tax Code, Chapter 321, the city of El Paso includes the area within the boundaries of Fort Bliss to the extent it is in the city's extraterritorial jurisdiction. However, the El Paso transit authority does not include Fort Bliss. See Transportation Code, §453.051 concerning the Creation of Transit Departments.

(m) Restrictions on local sales tax rebates and other economic incentives. Pursuant to Local Government Code, §501.161, Section 4A and 4B development corporations may not offer to provide economic incentives, such as local sales tax rebates authorized under Local Government Code, Chapters 380 or 381, to persons whose business consists primarily of purchasing taxable items using resale certificates and then reselling those same items to a related party. A related party means a person or entity which owns at least 80% of the business enterprise to which sales and use taxes would be rebated as part of an economic incentive.

(n) Prior contract exemptions. The provisions of §3.319 of this title (relating to Prior Contracts) concerning definitions and exclusions apply to prior contract exemptions.

(1) Certain contracts and bids exempt. No local taxes are due on the sale, use, storage, or other consumption in this state of taxable items used:

(A) for the performance of a written contract executed prior to the effective date of any local tax if the contract may not be modified because of the tax; or

(B) pursuant to the obligation of a bid or bids submitted prior to the effective date of any local tax if the bid or bids and contract entered into pursuant thereto are at a fixed price and not subject to withdrawal, change, or modification because of the tax.

(2) Annexations. Any annexation of territory into an existing local taxing jurisdiction is also a basis for claiming the exemption provided by this subsection.

(3) Local taxing jurisdiction rate increase; partial exemption for certain contracts and bids. When an existing local taxing jurisdiction raises its sales and use tax rate, the additional amount of tax that would be due as a result of the rate increase is not due on the sale, use, storage, or other consumption in this state of taxable items used:

(A) for the performance of a written contract executed prior to the effective date of the tax rate increase if the contract may not be modified because of the tax; or

(B) pursuant to the obligation of a bid or bids submitted prior to the effective date of the tax rate increase if the bid or bids and contract entered into pursuant thereto are at a fixed price and not subject to withdrawal, change, or modification because of the tax.

(4) Three-year statute of limitations.

(A) The exemption in paragraph (1) of this subsection and the partial exemption in paragraph (3) of this subsection have no effect after three years from the date the adoption or increase of the tax takes effect in the local taxing jurisdiction.

(B) The provisions of §3.319 of this title apply to this subsection to the extent they are consistent.

(C) Leases. Any renewal or exercise of an option to extend the time of a lease or rental contract under the exemptions provided by this subsection shall be deemed to be a new contract and no exemption will apply.

(5) Records. Persons claiming the exemption provided by this subsection must maintain records which can be verified by the comptroller or the exemption will be lost.

(6) Exemption certificate. An identification number is required on the prior contract exemption certificates furnished to sellers. The identification number should be the person's 11-digit Texas taxpayer number or federal employer's identification (FEI) number.

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

Filed with the Office of the Secretary of State on September 9, 2022.

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Jenny Burleson
Director, Tax Policy Division
Comptroller of Public Accounts
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CHAPTER 16. BROADBAND DEVELOPMENT
SUBCHAPTER B. BROADBAND DEVELOPMENT PROGRAM

34 TAC §§16.30 - 16.46

The Comptroller of Public Accounts proposes new §16.30, concerning definitions, §16.31, concerning notice of funds availability, §16.32, concerning federal funding; conflict with laws, rules, regulations, or guidance, §16.33, concerning designated area eligibility, §16.34, concerning designated area reclassification, §16.35, concerning program eligibility requirements, §16.36, concerning application process generally, §16.37, concerning overlapping applications or project areas, §16.38, concerning special rule for overlapping project areas in noncommercial applications, §16.39, concerning application requirements, §16.40, concerning evaluation criteria, §16.41, concerning application protest process, §16.42, concerning awards; grant agreement, §16.43, concerning reporting, §16.44, concerning records retention; audit, §16.45, concerning failure to perform, and §16.46, concerning forms; notices. These new sections implement the Texas Broadband Development Office. The new sections will be located in Chapter 16 (Broadband Development), new Subchapter B (Broadband Development Program).

The proposal is to comply with Government Code, Chapter 490I, which was enacted by House Bill 5, 87th Legislature, R.S., 2021. Government Code, §490I.0109, permits the comptroller to adopt rules regarding the Texas Broadband Development Office as necessary to implement that chapter.

Section 16.30 provides definitions.

Section 16.31 provides that the office shall publish a notice of funds availability.

Section 16.32 establishes that the office may establish eligibility and program requirements and preferences and make award decisions in compliance with state or federal law, rule, regulation, or guidance applicable to the type of funding to the extent necessary to avoid a conflict between the relevant law, rule, regulation, or guidance and this subchapter.

Section 16.33 describes designated area eligibility requirements in compliance with state and federal law, rule, regulation and guidance.

Section 16.34 establishes the process for petitioning for designated area reclassification.

Section 16.35 describes program eligibility requirements.

Section 16.36 describes the application process.

Section 16.37 establishes criteria for overlapping project areas.

Section 16.38 establishes an application amendment process for applications from noncommercial broadband service providers that contain project areas that overlap with project areas in applications from commercial broadband service providers.

Section 16.39 establishes application requirements.

Section 16.40 establishes criteria the office shall use to evaluate applications and provides preferences the office may use to make award decisions.

Section 16.41 establishes an application protest process.

Section 16.42 provides award decisions will be made at the sole discretion of the office, requires awards to be used only for certain specified purposes, and establishes a timeline for grant recipients to negotiate and sign grant agreements.

Section 16.43 provides requirements for the submission of reports and documentation by a grant recipient.

Section 16.44 provides records retention requirements and describes requirements for providing records, documentation, or other information required by the office and authorizes the office, upon reasonable notice, to audit the activities of a grant recipient as necessary to ensure that grant funds are used for the intended purpose of the reimbursement award and that the grant recipient has complied with the terms, conditions, and requirements of the grant.

Section 16.45 provides for forfeiture of grant funds in the event a grant recipient fails to perform under the grant agreement.

Section 16.46 permits the office to prescribe all forms or documents that may be required to implement this subchapter and permits the office to require that such forms be submitted electronically.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed new rules are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed new rules would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new rules would benefit the public by implementing Government Code, Chapter 490I, regarding the Texas Broadband Development Office. There would be no significant anticipated economic cost to the public. The proposed new rules would have no fiscal impact on small businesses or rural communities.

Comments on the proposal may be submitted to Greg Conte, Director, Broadband Development Office, at broadband@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new sections are proposed under Government Code, §490I.0109.

The new sections implement Government Code, Chapter 490I.

§16.30. Definitions.

As used in this subchapter and in these rules, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

(1) Applicant--A person that has submitted an application for an award under this subchapter.

(2) Application protest period--A period of thirty days beginning on the first day after an application is posted under §16.36(d) of this subchapter.

(3) Broadband service--Internet service that delivers transmission speeds capable of providing a minimum download or upload threshold speed that are the greater of:

(A) a download speed of 25 Mbps or faster; and an upload speed of three Mbps or faster as established under Government Code, §490I.0101; or

(B) the upload or download threshold speeds for advanced telecommunications capability under 47 U.S.C. §1302 as adopted by the Federal Communications Commission and as published on the comptroller's website under Government Code, §490I.0101.

(4) Broadband development map--The map created under Government Code, §490I.0105.

(5) Census block--The smallest geographic area for which the U.S. Bureau of the Census collects and tabulates decennial census data as shown on the most recent on Census Bureau maps.

(6) Census tract--A cluster of census blocks consisting of small, relatively permanent statistical subdivisions of a county or statistically equivalent entity that can be updated by local participants prior to each decennial census as part of the U.S. Census Bureau's Participant Statistical Areas Program.

(7) Designated area--A census block or other area as determined under §16.33 of this subchapter.

(8) Grant funds--Grants, low-interest loans, and other financial incentives awarded to applicants under this subchapter for the purpose of expanding access to and adoption of broadband service in designated areas determined to be eligible areas by the office under Government Code, §490I.0105.

(9) Grant recipient--An applicant who has been awarded grant funds under this subchapter.

(10) Mbps--Megabits per second.

(11) Office--The Broadband Development Office created under Government Code, §490I.0102.

(12) Project area--The area identified by an applicant by reference to census blocks, census tracts, shapefile areas, individual addresses, or any portions thereof, for funding under this subchapter.

(13) Unserved area--A designated area or location within a designated area that does not have access to broadband service.

(14) Underserved area--A designated area or location within a designated area that has access to broadband service but lacks access to internet service offered with a download speed of at least 100 Mbps and an upload speed of at least 20 Mbps.

§16.31. Notice of Funds Availability.

(a) The office may publish a notice of funds availability in the Texas Register, the *Texas.gov eGrants* website, or on the comptroller's website. The date the notice is issued is the first day the notice is published in the *Texas Register.*

(b) The notice may include:

(1) the total amount of grant funds available for awards;

(2) the minimum and maximum amount of grant funds available for each application;

(3) limitations on the geographic distribution of grant funds;

(4) eligibility requirements;

(5) application requirements;

(6) award and evaluation criteria;

(7) the date by which applications must be submitted to the office;

(8) the anticipated date of award; and

(9) any other information necessary for award as determined by the office.

§16.32. Federal Funding; Conflict with Laws, Rules, Regulations, or Guidance.

(a) If federal funding is used to make an award, the office may establish eligibility and program requirements and preferences, and make award decisions, based upon any criteria required by federal law, regulation, or guidance applicable to the type of funding used to make the award.

(b) If a state or federal law, rule, regulation, or guidance applicable to the type of funding used to make the reimbursement award

conflicts with this subchapter, the state or federal law, rule, regulation, or guidance applicable to the type of funding used to make the reimbursement award prevails over this subchapter to the extent necessary to avoid the conflict.

§16.33. Designated Area Eligibility.

(a) For the purpose of developing the broadband development map, the scope of a designated area in this state shall consist of a census block, unless the comptroller determines that using a census block is not technically feasible or data is not available at the census block level.

(b) If the comptroller determines that developing the broadband development map at the census block level is not feasible, the comptroller shall develop the map using the smallest level for which information is available from the Federal Communications Commission.

(c) The comptroller shall determine whether a designated area is eligible for funding based on the broadband development map, if available, or if not available may:

(1) Use a map produced by the Federal Communications Commission that complies with Government Code, §490I.0105(q); or

(2) Use information available from the Federal Communications Commission, political subdivisions of this state, or broadband service providers, to make a determination regarding whether a designated area is eligible for funding.

(d) A designated area is eligible for funding under the program if:

(1) fewer than 80% of the addresses in the designated area have access to broadband service; and

(2) the federal government has not awarded funding under a competitive process to support the deployment of broadband service to addresses in the designated area.

(e) A designated area is ineligible for funding under the program if:

(1) 80% or more of the addresses in the designated area have access to broadband service; or

(2) the federal government has awarded funding under a competitive process to support the deployment of broadband service to addresses in the designated area.

(f) Notwithstanding subsection (e)(2) of this section, a designated area where a political subdivision or broadband service provider has received or has been designated to receive federal funding related to the construction of broadband infrastructure shall be considered to be an unserved area and therefore eligible for funding under the program if:

(1) the funds:

(A) were awarded more than two years immediately prior to the date a notice of funds availability was issued by the office;

(B) have been designated for award and are not intended to result in the initiation of related construction activity in the designated area within two years after the date the notice of funds availability is issued; or

(C) were awarded less than two years immediately prior to the date a notice of funds availability was issued by the office and the project for which the funding was awarded has been completed; and

(2) the designated area otherwise meets the qualifications to be eligible for funding.

§16.34. Designated Area Reclassification.

(a) A broadband service provider or a political subdivision of this state may petition the office to reclassify a designated area as eligible or ineligible for funding. The office shall provide notice of the petition to each impacted political subdivision, and each broadband service provider that provides broadband service to the designated area, if known to the office, and post notice of the petition on the comptroller's website.

(b) Not later than the 45th day after the date that an impacted political subdivision or a broadband service provider that provides broadband service to the designated area receives a notice of a petition under subsection (a) of this section:

(1) an impacted political subdivision may provide information to the office showing whether the designated area should or should not be reclassified; and

(2) each broadband service provider that provides broadband service to the designated area shall provide information to the office showing whether the designated area should or should not be reclassified.

(c) Not later than the 75th day after the date that a broadband service provider that provides broadband service to the designated area receives the notice of a petition under subsection (a) of this section, the office shall determine whether to reclassify the designated area.

(d) The office shall consider the following criteria in making a determination to reclassify a designated area under subsection (c) of this section:

(1) an evaluation of Internet speed test data and information on end user addresses within the designated area;

(2) community surveys regarding the reliability of Internet service within the designated area, where available;

(3) information related to the loss of funding from the state or federal government through forfeiture or disqualification; and

(4) other information useful in determining funding eligibility.

(e) The office may reclassify a designated area that is classified as ineligible for funding on account of the existence of state or federal funding as eligible for funding if:

(1) funding from the state or federal government is forfeited or the recipient of the funding is disqualified from receiving the funding; and

(2) the designated area otherwise meets the qualifications to be eligible for funding.

(f) A determination made by the office under this subsection is not a contested case for purposes of Government Code, Chapter 2001.

(g) If after making an award the office determines that at the time of making the award a designated area was not eligible to receive funding under this subchapter, the office may rescind the award and the grant recipient shall return any grant funds that were awarded. The office may, at its sole discretion, reduce the amount required to be returned under this subsection if the office determines that the grant funds or any portion thereof have already been expended.

§16.35. Program Eligibility Requirements.

(a) Eligible participants of the program include:

(1) political subdivisions of this state;

(2) commercial broadband service providers;

(3) non-commercial broadband services providers; and

(4) partnerships between political subdivisions of this state, cooperatively organized entities, broadband service providers, or any combination thereof;

(b) The office may not award grant funds to an otherwise eligible participant under subsection (a)(3) of this section if a commercial broadband service provider has submitted an eligible application for the same area.

(c) An entity that does not provide information requested by the office under Government Code, §490I.0105, is not eligible to participate in the program and the office may not award grant funds to a broadband service provider that does not report information requested by the office under Government Code, §490I.0105.

§16.36. Application Process Generally.

(a) No awards for funding will be disbursed by the office except pursuant to an application submitted in accordance with this subchapter.

(b) An application for funding under this subchapter shall be submitted on the forms and in the manner prescribed by the office. The office may require that applications be submitted electronically.

(c) Prior to publication of application information pursuant to Government Code, §490I.0106(e), the office may undertake an examination to determine whether the application appears on its face to comply with applicable program requirements. The office may not accept an application that does not appear to comply with applicable program requirements on its face.

(d) The office shall publish on its website information from each accepted application, including the applicant's name, the project area targeted for expanded broadband service access or adoption by the application, and any other information the office considers relevant or necessary. The information will remain on the website for a period of at least 30 days before the office makes a decision on the application.

(e) During the 30-day posting period described by subsection (d) of this section for an application, the office shall accept from any interested party a written protest of the application relating to whether the applicant or project is eligible for an award or should not receive an award based on the criteria prescribed by the office. A protest of an application must be submitted as provided under §16.41 of this subchapter.

(f) Notwithstanding any deadline for submitting an application, if the office upholds a protest on the grounds that one or more of the locations in a project area have access to broadband service, the applicant may resubmit the application without the challenged locations not later than 30 days after the date that the office upheld the protest.

(g) If the office upholds a protest and the applicant resubmits an application in accordance with subsection (f) of this section, the resubmitted application is not subject to further protest.

§16.37. Overlapping Applications or Project Areas.

(a) Except as provided under §16.38 of this subchapter, if at the close of the application period one or more applications or project areas overlap one or more other applications or project areas, relative to one or more unserved or underserved areas, including census blocks, census tracts, shapefile areas, individual addresses, or portions thereof, the office shall inform the impacted applicants of the project area overlap prior to publishing information regarding the applications as required by §16.36 of this subchapter and provide the impacted applicants with an opportunity to resolve the overlapping unserved or underserved area.

(b) Applicants working to resolve an instance of overlapping applications or project areas shall jointly notify the office of such efforts not later than the 10th day after the first day of the application protest period.

(c) Applicants who have provided notice under subsection (b) of this section may submit their proposed resolution to the office and may amend their application not later than the last day of the application protest period. The proposed resolution between impacted applicants may not result in the addition of partners to a previously submitted application or project area nor the expansion of an application's project area.

(d) If the impacted applicants do not resolve the overlapping unserved census blocks, census tracts, shapefile areas, individual addresses, or portions thereof, each impacted application shall be evaluated independently; and the office shall:

(1) score each impacted application and the application receiving the highest score shall proceed to grant funding consideration with its project area boundary intact.

(2) remove the overlapping project area from the lower scored applications and provide notice to the impacted applicants that the overlapping project areas have been removed from the application.

(e) If, as a result of removing overlapping project areas, the remaining project area is less than 50% of the original project area, the office may remove the application from grant funding consideration. The office may use any reasonable method to calculate the remaining project area.

(f) If the office removes an overlapping project area from an application, an applicant may amend and resubmit an application without the overlapping area if:

(1) The remaining project area is greater than 50% of the original project area; or

(2) The remaining project area is less than 50% of the original project area and the office does not remove the application from grant funding consideration under subsection (e) of this section.

(g) If an amended application without the overlapping areas is not received by the office by the 10th day after receiving notice under subsection (d)(2) of this section, the office may remove the application from grant funding consideration.

§16.38. Special Rule for Overlapping Project Areas in Noncommercial Applications.

(a) If a commercial and noncommercial broadband service provider submit an eligible application to provide broadband service access to the same project area, or a portion thereof, the office shall inform the noncommercial provider of the overlap and the noncommercial provider shall be required to submit an amended application eliminating the areas of overlap for which the commercial provider proposes to provide expanded broadband service access.

(b) If a noncommercial broadband service provider required to amend its application under subsection (a) of this section does not submit an amended application to the office by the 30th day after receiving notice of the overlapping areas, the office may remove the application from grant funding consideration.

§16.39. Application Requirements.

(a) As set forth in greater detail in the notice of funds availability or the application instructions prescribed by the office, each application shall include:

(1) applicant information, statement of qualifications, and partnerships;

(2) maps of the project area and locations to be served;

(3) a technical description of the project;

(4) project budget(s), matching funds, costs, and proof of funding availability;

(5) proposed services, marketing, adoption, and community support;

(6) information required by the notice of funds availability; and

(7) any other information or documentation that the office may require.

(b) During the application process, the office may require an applicant to submit additional information the office determines is necessary to make an award determination.

§16.40. Evaluation Criteria.

(a) The office shall prioritize applications that:

(1) expand access to and adoption of broadband service in designated areas that are eligible for funding in which the lowest percentage of addresses have access to broadband service; and

(2) expand access to broadband service in public and private primary and secondary schools and institutions of higher education.

(b) In making award decisions, the office shall consider and may give preference to applications based upon the following evaluation criteria:

(1) application participant(s) experience;

(2) technical specifications including broadband transmission speeds (Mbps upload and download) that will be deployed as a result of the project;

(3) estimated project completion date;

(4) matching funds amount, percentage, and source of matching funds;

(5) cost effectiveness and overall impact as measured by the total project cost, the total number of prospective broadband service recipients to be served by the project, the proportion of recipients to be served by the project compared to the population in the designated area, and the project cost per prospective broadband service recipient;

(6) geographic location;

(7) the number and percentage of unserved and underserved households and businesses in the project area;

(8) community, non-profit, or cooperative involvement or participation in the project;

(9) affordability of broadband services in a project area prior to the deployment of broadband services as a result of the project;

(10) consumer price of broadband services that applicant proposes to deploy as a result of the project;

(11) participation in federal programs that provide low-income consumers with subsidies for broadband services;

(12) small business and historically underutilized business involvement or subcontracting participation; and

(13) any additional factors listed in a notice of funds availability published by the office.

§16.41. Application Protest Process.

(a) The protesting party bears the burden to establish that an applicant or project is ineligible for an award or should not receive an award based on the criteria prescribed by the office.

(b) Protests shall be submitted electronically in the manner and on the forms prescribed by the office and shall be accompanied by all relevant supporting documentation.

(c) As set forth in greater detail in the application instructions prescribed by the office, each protest shall, at a minimum, include:

(1) a notarized statement verifying that the protest and submitted information are true and submitted in good faith;

(2) data from the broadband development map, if available, or if not available the current Federal Communications Commission (FCC) Form 477 or equivalent;

(3) a detailed map, using the project area map(s) submitted by the applicant, delineating the general challenged areas and indicating where the protested serviceable locations are within the proposed project area;

(4) street level data for customers receiving service within the challenged area including, but not limited to, the area number of serviceable locations within the proposed project area and the minimum and maximum speeds those serviceable locations are able to receive; and

(5) GIS data files, including shapefiles and file geodatabases.

(d) The office shall review the protest and make a written determination as to whether the protest should be upheld.

(e) If the office upholds a protest, an applicant may amend and resubmit an application without the challenged locations and re-scope the application or project area.

(f) If an amended application without the challenged areas is not received by the office by the 10th day after receiving the determination under subsection (d) of this section, the office may remove the application from grant funding consideration.

(g) A determination made by the office under this section is not a contested case for purposes of Government Code, Chapter 2001.

§16.42. Awards; Grant Agreement.

(a) All award decisions shall be made at the sole discretion of the office and are not appealable or subject to protest.

(b) Awards for grant funds awarded to applicants under this subchapter may only be used for capital expenses, purchase or lease of property, and other expenses, including backhaul and transport, that will facilitate the provision or adoption of broadband service.

(c) A grant recipient shall have 30 days from the date of award to negotiate and sign the grant agreement. If the grant agreement is not signed by the grant recipient and received by the office by the 30th day after the award of the grant agreement, the office may rescind the award.

§16.43. Reporting.

(a) Grant recipients shall submit to the office periodic reports for each funded project for the duration of the grant agreement. The frequency, format and requirements of the reports shall be determined at the discretion of the office.

(b) Grant recipients, upon request from the office, shall provide:

(1) project and expenditure reports, including but not limited to, expenditures, project status, subawards, civil rights com-

pliance, equity indicators, community engagement efforts, geospatial data, workforce plans and practices, and information about subcontracted entities; and

(2) performance reports, including but not limited to project outputs and outcomes.

(c) The office, at its sole discretion and at any time, upon reasonable notice, may request any additional data and reporting information that the office deems necessary to substantiate that grant funds are being used for the intended purpose and that the grant recipient has complied with the terms, conditions, and requirements of the grant agreement.

§16.44. Records Retention; Audit.

(a) Grant recipients must maintain all financial records, supporting documents, and all other records pertinent to the project or award for the later of:

(1) five years following the submission of a final report;

(2) if any litigation, claim, or audit is started, or any open records request is received, before the expiration of the five-year records retention period, one year after the completion of the litigation, claim, audit, or open records request and resolution of all issues which arise from it; or

(3) the period required by the specific federal funding source applicable to the grant.

(b) At any time during the grant agreement and for a period of five years after the project has been completed, the office or its designee may, upon reasonable notice, request any records from or audit the books and records of a grant recipient to verify that the grant recipient has complied with the terms, conditions, and requirements of the grant agreement and this subchapter. Grant recipients shall provide the requested records or information to the office not later than 30 days after a written request is made by the office.

§16.45. Failure to Perform.

(a) A grant recipient shall forfeit up to the amount of the grant funds received if it fails to perform, in material respect, the obligations established in the grant agreement. The amount forfeited shall be determined at the sole discretion of the office.

(b) A grant recipient shall not be required to forfeit the amount of the grant funds received if it fails to perform due to acts of war, terrorism, natural disaster declared by the governor of this state, an act of God, force majeure, a catastrophe, or such other occurrence over which the grant recipient has no control.

(c) A failure to perform resulting in forfeiture of grant funds may be cause for the office to bar an applicant from future consideration for grant funds under this program.

§16.46. Forms; Notices.

(a) Unless otherwise required by law, the office may prescribe all forms or other documents required to implement this subchapter and may require that the forms or other documents be submitted electronically.

(b) Any notice required by these rules to be sent by the office may be provided electronically and the office is entitled to rely on an email address provided by an applicant, grant recipient or other person, including a political subdivision or broadband service provider, for all purposes relating to notification. Applicants and grant recipients must provide an email address that is designated for receipt of notices from the office.

(c) If notice cannot be sent electronically, the office shall provide notice by regular U.S. Mail and the office is entitled to rely on the mailing address currently on file for all purposes relating to notification.

(d) Service of notice by the office is complete and receipt is presumed on:

(1) the date the notice is sent, if sent before 5:00 p.m. by electronic mail;

(2) the date after the notice is sent, if sent after 5:00 p.m. by electronic mail; or

(3) three business days after the date it is placed in the mail, if sent by regular U.S. Mail.

(e) When multiple recipients receive notice under §16.34(a) of this subchapter resulting in more than one date of service as determined under subsection (d) of this section, the date that a broadband provider receives notice for the purpose of §16.34 of this subchapter is the latest service date for that notice.

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 September 9, 2022.

TRD-202203626
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: October 23, 2022
For further information, please call: (512) 475-2220

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 344. EMPLOYMENT, CERTIFICATION, AND TRAINING
SUBCHAPTER B. QUALIFICATIONS FOR CERTIFICATION AND EMPLOYMENT

37 TAC §344.200

The Texas Juvenile Justice Department (TJJD) proposes to amend Texas Administrative Code Chapter 344, Subchapter B, §344.200.

SUMMARY OF CHANGES

The amendments to §344.200, concerning General Qualifications for Positions Requiring Certification, will include adding that, to be eligible for certification, juvenile probation officers, juvenile supervision officers, and community activities officers must have no criminal history described in new §344.410 unless TJJD has reviewed it and approved certification despite the criminal history.

FISCAL NOTE

Emily Anderson, Deputy Executive Director, Operations and Finance, has determined that, for each year of the first five years

the amended section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Policy Advisor, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be the effective operation of community-based juvenile justice programs and facilities as a result of requiring individuals who have contact with or supervise youth in these settings to be adequately qualified and to have the necessary training and credentials.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the proposed section is in effect, the section will have the following impacts.

(1) The proposed section does not create or eliminate a government program.

(2) The proposed section does not require the creation or elimination of employee positions at TJJD.

(3) The proposed section does not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed section does not impact fees paid to TJJD.

(5) The proposed section does not create a new regulation.

(6) The proposed section does not expand, limit, or repeal an existing regulation.

(7) The proposed section does not increase or decrease the number of individuals subject to the section's applicability.

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

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The amended section is proposed under §221.002(a)(3), Human Resources Code, which requires TJJD to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel. The amended section is also proposed under §§222.001, 222.002, and 222.003, Human Resources Code, which establish minimum requirements for appointment in a position requiring certification from TJJD.

No other statute, code, or article is affected by this proposal.

§344.200. General Qualifications for Positions Requiring Certification.

(a) Juvenile Probation Officer. To be eligible for certification as a juvenile probation officer, supervisor of a juvenile probation officer, or chief administrative officer, an individual must:

(1) be at least 21 years of age;

(2) be of good moral character;

(3) have no disqualifying criminal history as described in this chapter;

(4) have no criminal history as described in §344.410(a) of this chapter unless TJJD has reviewed it and determined the person is not ineligible for certification due to the criminal history;

(5) [~~(4)~~] have acquired a bachelor's degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board;

(6) [~~(5)~~] possess the work experience required in §344.210 of this chapter [~~title~~] or graduate study required in §344.204 of this chapter [~~title~~];

(7) [~~(6)~~] never have had any type of certification revoked by TJJD;

(8) [~~(7)~~] complete the training required by this chapter; and

(9) [~~(8)~~] pass the certification exam as required by §344.700 of this chapter [~~title~~].

(b) Juvenile Supervision Officer.
To be eligible for certification as a juvenile supervision officer, an individual must:

(1) be at least 21 years of age;

(2) be of good moral character;

(3) have no disqualifying criminal history as described in this chapter;

(4) have no criminal history as described in §344.410(a) of this chapter unless TJJD has reviewed it and determined the person is not ineligible for certification due to the criminal history;

(5) [~~(4)~~] have acquired a high school diploma or its equivalent as specified in §344.204 of this chapter [~~title~~];

(6) [~~(5)~~] never have had any type of certification revoked by TJJD;

(7) [~~(6)~~] complete the training required by this chapter; and

(8) [~~(7)~~] pass the certification exam as required by §344.700 of this chapter [~~title~~].

(c) Community Activities Officer.
To be eligible for certification as a community activities officer, an individual must:

(1) be at least 21 years of age;

(2) be of good moral character;

(3) have no disqualifying criminal history as described in this chapter;

(4) have no criminal history as described in §344.410(a) of this chapter unless TJJD has reviewed it and determined the person is not ineligible for certification due to the criminal history;

(5) [~~(4)~~] have acquired a high school diploma or its equivalent as specified in §344.204 of this chapter [~~title~~];

(6) [~~(5)~~] never have had any type of certification revoked by TJJD; and

(7) [~~(6)~~] complete the training required by this chapter.

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

Filed with the Office of the Secretary of State on September 12, 2022.

TRD-202203660
Christian von Wupperfeld
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: October 23, 2022
For further information, please call: (512) 490-7278

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SUBCHAPTER C. CRIMINAL HISTORY AND BACKGROUND CHECKS

37 TAC §§344.300 344.320, 344.330

The Texas Juvenile Justice Department (TJJD) proposes to amend Texas Administrative Code Chapter 344, Subchapter C, §§344.300, 344.320, and 344.330.

SUMMARY OF CHANGES

The amendments to §344.300, concerning Criminal History Checks, will include adding that department or facility policy must prohibit direct, unsupervised access to juveniles in a juvenile justice program or facility by any person with a criminal history described in new §344.410 who has not been reviewed and approved by TJJD or the juvenile board or designee, as appropriate; clarifying that a criminal history check must be conducted for an individual who is in a position eligible for optional certification *and who is seeking certification* or may have direct, unsupervised access to juveniles and who provides goods or services under contract *on the premises of a juvenile justice facility or program,* with certain exceptions; and clarifying that, before any individual listed earlier in this section begins employment or service provision, the department must *ensure the criminal history is reviewed and the person is not determined to have a criminal history prohibiting employment or certification* [instead of the department must use the information in Fingerprint-Based Applicant Clearinghouse of Texas (FACT) to determine if the individual has a disqualifying criminal history].

The amendments to §344.320, concerning Criminal History Checks for Position and Departmental Transfers, will include modifying the section title to reflect changes to the text of the section and adding that the employing department or facility must complete a criminal history check when the department or facility is seeking certification for a person in a position that allows for optional certification.

The amendments to §344.330, concerning Criminal History Checks for Employees of Private Juvenile Justice Facilities, will include a corresponding language change to describe the offenses that require the probation department to immediately notify the private facility administration in writing if the department receives a FACT alert regarding an arrest, conviction, or deferred adjudication. The current requirement to notify of a disqualifying offense encompasses any offense punishable by confinement or imprisonment. Because the changes to this section have modified the definition of disqualifying offense to be a small subset of offenses, this section has been modified to specify that all offenses punishable by confinement or imprisonment mandate the notification.

FISCAL NOTE

Emily Anderson, Deputy Executive Director, Operations and Finance, has determined that, for each year of the first five years the amended sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the sections.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Policy Advisor, has determined that for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of administering the sections will be the effective operation of community-based juvenile justice programs and facilities as a result of requiring individuals who have contact with or supervise youth in these settings to be adequately qualified and to have the necessary training and credentials.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the proposed sections are in effect, the sections will have the following impacts.

(1) The proposed sections do not create or eliminate a government program.

(2) The proposed sections do not require the creation or elimination of employee positions at TJJD.

(3) The proposed sections do not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed sections do not impact fees paid to TJJD.

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

(6) The proposed sections do not expand, limit, or repeal an existing regulation.

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

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

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The amended sections are proposed under §221.002(a)(3), Human Resources Code, which requires TJJD to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel. The amended sections are also proposed under §§222.001, 222.002, and 222.003, Human Resources

Code, which establish minimum requirements for appointment in a position requiring certification from TJJD.

No other statute, code, or article is affected by this proposal.

§344.300. Criminal History Checks.

(a) Department or facility policy must prohibit direct, unsupervised access to juveniles in a juvenile justice program or facility by the following:

(1) any person with a disqualifying criminal history as described in §344.400 of this chapter [~~title~~]; and

(2) any person with a criminal history described in §344.410(a) of this chapter, unless the person's criminal history has been reviewed by TJJD or the juvenile board or designee, as appropriate, and the review results in a determination that the person is not ineligible for certification, employment, or service in the position.

(b) A criminal history check as described in this section must be conducted for:

(1) an individual who is in a position requiring certification [~~or eligible for optional certification~~];

(2) an individual who is in a position eligible for optional certification who is seeking certification; and

(3) [~~(2)~~] an individual who may have direct, unsupervised access to juveniles in a juvenile justice facility or program and who is:

(A) an employee in a position neither [~~not~~] requiring certification nor [~~and not~~] eligible for optional certification;

(B) an employee in a position eligible for optional certification who is not seeking certification;

(C) [~~(B)~~] a volunteer;

(D) [~~(C)~~] an intern; or

(E) [~~(D)~~] an individual who provides goods or services under contract on the premises of a juvenile justice facility or program, except as provided in subsection (c) of this section.

(c) A criminal history check as specified in this section is not required for employees of a public school district who:

(1) provide services in a juvenile justice facility or program; and

(2) have completed all criminal history checks required by the Texas Education Agency.

(d) Before any individual listed in subsection (b) of this section begins employment or service provision:

(1) the department or facility must ensure the individual has electronically submitted fingerprints using Fingerprint Applicant Services of Texas (FAST) and verify that the department is able to subscribe to the individual's Fingerprint-Based Applicant Clearinghouse of Texas (FACT) record;

(2) the department must subscribe to that individual's record in FACT; and

(3) the department must ensure the criminal history is reviewed [~~use the information in FACT to determine if the individual has a disqualifying criminal history~~] as specified in this chapter and must ensure the reviewing entity has determined the person is not ineligible for certification, employment, or providing services based on the person's criminal history, in accordance with this chapter [~~§344.400 of this title~~].

(e) The department must maintain a FACT subscription for each individual in a position requiring a criminal history check for as long as the individual remains in such a position. This requirement applies regardless of the date employment or service provision began.

(f) The requirements of this section do not apply to the juvenile's attorney, family members, managing conservator, guardians, individuals listed as a juvenile's approved visitors, or any other individual not listed in subsection (b) of this section.

§344.320. Criminal History Checks for Position and Departmental Transfers and for Optional Certification.

(a) The employing department or facility must complete a criminal history check in accordance with §344.300 and §344.302 of this chapter [~~title~~] when:

(1) an individual who was not previously certified accepts a position requiring certification; [~~or~~]

(2) a certified officer employed by a department or facility accepts simultaneous or subsequent employment at a department or facility operated by or under contract with a different juvenile board; or

(3) the department or facility is seeking certification for a person in a position that allows for optional certification as provided in §344.802 of this chapter.

(b) For individuals with a record in the Fingerprint-Based Applicant Clearinghouse of Texas (FACT), the searches may be conducted using the existing fingerprints.

§344.330. Criminal History Checks for Employees of Private Juvenile Justice Facilities.

The following provisions apply when a private juvenile justice facility is operating under contract with a governmental entity as required by Sections 51.12, 51.125, and 51.126, Texas Family Code [~~§51.12~~].

(1) The juvenile probation department serving the county where the private facility is located is responsible for performing the checks and subscribing to the Fingerprint-Based Applicant Clearinghouse of Texas (FACT), as required under §344.300 of this chapter, [~~title~~] for the private facility.

(2) The department and the private facility must have a written agreement that:

(A) authorizes the private facility to have access to information resulting from the criminal history checks;

(B) limits the private facility's use of the information to the purpose for which it is given;

(C) requires the private facility to ensure the confidentiality of the information; and

(D) provides for sanctions if the private facility violates a requirement in subparagraphs (B) or (C) of this paragraph.

(3) The private facility must provide the following information to the department in writing:

(A) identifying information necessary for the department to conduct the criminal history checks as required by this chapter; and

(B) notification within 10 calendar days after an individual subject to criminal history checks separates from employment, ceases to provide services, or transfers out of a position that requires criminal history checks.

(4) The chief administrative officer or designee of the juvenile probation department serving the county where the private facility

is located must notify the private facility in writing of the results of each initial criminal history check and each check required for renewal of certification.

(5) The department must immediately notify the private facility administrator in writing if the department receives a FACT alert regarding an arrest, conviction, or deferred adjudication for any offense punishable by confinement or imprisonment [~~a disqualifying offense~~] for an individual who is employed by or provides services at the private facility.

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 September 12, 2022.

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Christian von Wupperfeld
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: October 23, 2022
For further information, please call: (512) 490-7278

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SUBCHAPTER D. DISQUALIFYING CRIMINAL HISTORY

37 TAC §§344.400, 344.410, 344.420, 344.430

The Texas Juvenile Justice Department (TJJD) proposes to amend Texas Administrative Code Chapter 344, Subchapter D, §344.400. TJJD also proposes new §§344.410, 344.420, and 344.430.

SUMMARY OF CHANGES

The amendments to §344.400, concerning Disqualifying Criminal History, will include revising, in accordance with Chapter 53, Occupations Code, disqualifying criminal history to include only convictions or deferred adjudications for offenses in Article 42A.054, Code of Criminal Procedure, and sexually violent offenses under Article 62.001, Code of Criminal Procedure, or substantially equivalent violations against the laws of another state or the United States; removing other felonies and misdemeanors as well as the general requirement to register as a sex offender from the list of things that are an automatic disqualifier for certification (which will be addressed in new §344.410); clarifying that TJJD is the entity that determines whether a federal offense or an offense in another state is substantially equivalent to an offense listed in Article 42A.054 or 62.001, Code of Criminal Procedure; and deleting references to variances granted under the repealed version of 344.410.

The amendments to §344.400 will also include adding that the newly created disqualification for a sexually violent offense does not apply to officers certified before the effective date of this section unless the certification expires or to noncertified individuals in a position requiring criminal history checks who began service provision before the effective date of this section with no break in service after that date.

In addition, the amendments to §344.400 will include removing the following provisions: 1) the date of conviction or order of deferred adjudication is used to determine when applicable time periods expire (addressed in new §344.410); 2) regardless of the time periods set forth, at least one year must have elapsed since the completion of any period of incarceration, community supervision, or parole (addressed in new §344.410); 3) if a department receives notification of an arrest for potentially disqualifying criminal conduct of a person hired in the capacity of a certified officer, the department must notify TJJD's certification office in writing of the alleged offense no later than 10 calendar days after receiving notice of the arrest (addressed in new §344.430); 4) if a department receives notification of a conviction for disqualifying criminal conduct of a person hired in the capacity of a certified officer, the department must notify TJJD's certification office in writing of the offense no later than 10 calendar days after receiving notice of the conviction (addressed in new §344.430); 5) any conviction occurring before January 1, 2010, will not disqualify a noncertified individual in a position requiring a criminal history check who began employment or service provision before January 1, 2010, with no break in service after that date; and 6) any felony conviction, felony deferred prosecution, felony deferred adjudication, misdemeanor conviction, misdemeanor deferred prosecution, or misdemeanor deferred adjudication occurring before September 1, 2003, will not disqualify a certified officer who held an active certification on September 1, 2003.

New §344.410, concerning Other Criminal History, will establish which types of criminal history would make an individual ineligible for certification without prior TJJD approval and ineligible for certain noncertified positions without an exemption from the juvenile board.

New §344.420, concerning Review of Criminal History, will establish the process TJJD will use to review a person's criminal history.

New §344.430, concerning Arrest or Conviction of Current Employees, will establish steps to be taken when a person who is certified or is in the process of being certified is arrested or convicted.

FISCAL NOTE

Emily Anderson, Deputy Executive Director, Operations and Finance, has determined that, for each year of the first five years the new and amended sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the sections.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Policy Advisor, has determined that for each year of the first five years the new and amended sections are in effect, the public benefit anticipated as a result of administering the sections will be the effective operation of community-based juvenile justice programs and facilities as a result of requiring individuals who have contact with or supervise youth in these settings to be adequately qualified and to have the necessary training and credentials.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the proposed sections are in effect, the sections will have the following impacts.

(1) The proposed sections do not create or eliminate a government program.

(2) The proposed sections do not require the creation or elimination of employee positions at TJJD.

(3) The proposed sections do not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed sections do not impact fees paid to TJJD.

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

(6) The proposed sections do not expand, limit, or repeal an existing regulation.

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

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

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The new and amended sections are proposed under §221.002(a)(3), Human Resources Code, which requires TJJD to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel. The sections are also proposed under §§222.001, 222.002, and 222.003, Human Resources Code, which establish minimum requirements for appointment in a position requiring certification from TJJD.

No other statute, code, or article is affected by this proposal.

§344.400. Disqualifying Criminal History.

(a) Applicants for Certification.

An individual with the following criminal history is not eligible for [~~initial~~] certification or for [~~initial~~] employment in a position requiring certification:

(1) deferred adjudication or conviction for a felony listed in Texas Code of Criminal Procedure Article 42A.054 (formerly known as "3(g) offenses" under former Article 42.12) or a substantially equivalent violation against the laws of another state or the United States (as determined by TJJD), regardless of the date of disposition; or

(2) deferred adjudication or conviction for a sexually violent offense as defined in Article 62.001, Texas Code of Criminal Procedure, or a substantially equivalent violation against the laws of another state or the United States (as determined by TJJD), regardless of the date of disposition.

[~~(2) deferred adjudication or conviction for a felony other than those referenced in paragraph (1) of this subsection or a substantially equivalent violation against the laws of another state or the United States within the past 10 years;~~]

[~~(3) deferred adjudication or conviction for any Class A or B misdemeanor in Texas or a substantially equivalent violation against the laws of another state or the United States within the past five years; or~~]

[~~(4) current requirement to register as a sex offender under Texas Code of Criminal Procedure Chapter 62.~~]

[~~(b) Individuals Employed in a Position Requiring Certification.~~

~~An individual with the criminal history described in subsection (a) of this section is not eligible for continued employment in a position requiring certification unless a variance has been granted in accordance with §344.410 of this title.~~]

(b) [~~(c)~~] Other Individuals Subject to Criminal Background Checks.

An individual with the criminal history described in subsection (a) of this section is not eligible to serve in a position listed in §344.300(b)(3)[~~(2)~~] of this chapter [~~title unless an exemption has been granted in accordance with §344.410 of this title~~].

(c) [~~(d)~~] General Provisions.

[~~(1) The date of conviction or order of deferred adjudication is used to determine when applicable time periods expire.~~]

[~~(2) Regardless of the time periods set forth in subsection (a) of this section, at least one year must have elapsed since the completion of any period of incarceration, community supervision, or parole.~~]

[~~(3) If a department receives notification of an arrest for potentially disqualifying criminal conduct of a person hired in the capacity of a certified officer, the department must notify TJJD's certification office in writing of the alleged offense no later than 10 calendar days after receiving notice of the arrest.~~]

[~~(4) If a department receives notification of a conviction for disqualifying criminal conduct of a person hired in the capacity of a certified officer, the department must notify TJJD's certification office in writing of the offense no later than 10 calendar days after receiving notice of the conviction.~~]

(1) [~~(5)~~] Subsection (a)(1) of this section does not apply to individuals [~~officers~~] certified before February 1, 2018, [~~the effective date of this section~~] unless the certification expires.

(2) [~~(6)~~] Subsection (a)(1) of this section does not apply to individuals in a position listed in §344.300(b)(3) [~~(2)~~] of this chapter [~~title~~] who began service provision before February 1, 2018, [~~the effective date of this section~~] with no break in service after that date.

(3) Subsection (a)(2) of this section does not apply to individuals certified before the most recent effective date of this section unless the certification expires.

(4) Subsection (a)(2) of this section does not apply to individuals in a position listed in §344.300(b)(3) of this chapter who began service provision before the most recent effective date of this section with no break in service after that date.

[~~(7) Any conviction occurring before January 1, 2010, will not disqualify an individual in a position listed in §344.300(b)(2) of this title who began employment or service provision before January 1, 2010, with no break in service after that date.~~]

[~~(8) Any felony conviction, felony deferred prosecution, felony deferred adjudication, misdemeanor conviction, misdemeanor deferred prosecution, or misdemeanor deferred adjudication occurring before September 1, 2003, will not disqualify a certified officer who held an active certification on September 1, 2003.~~]

§344.410. Other Criminal History.

(a) Applicants for Certification.

(1) An individual with the following criminal history is not eligible for certification, employment, or otherwise providing service in a position requiring certification without prior review and approval by TJJD as provided in §344.420 of this chapter:

(A) deferred adjudication or conviction for a felony other than those referenced in §344.400(a) of this chapter or a substantially equivalent violation against the laws of another state or the United States (as determined by TJJD) if the date of deferred adjudication or conviction was less than 10 years prior to the date the review is requested; or

(B) deferred adjudication or conviction for any Class A or B misdemeanor in Texas or a substantially equivalent violation against the laws of another state or the United States (as determined by TJJD) if the date of deferred adjudication or conviction was less than five years prior to the date the review is requested.

(2) Regardless of the date of conviction or deferred adjudication, a review is required if an individual was incarcerated or placed on community supervision for an offense described by paragraph (1) of this subsection and less than one year has elapsed since the completion of any period of incarceration, community supervision, or parole.

(3) Regardless of the date of conviction or deferred adjudication, a review is required if an individual has a current requirement to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure, for an offense other than an offense described by §344.400(a) of this chapter.

(b) Other Individuals Subject to Criminal Background Check.

(1) An individual with the criminal history described in subsection (a) of this section is not eligible to begin serving or continue serving in a position listed in §344.300(b)(3) of this chapter unless the juvenile board or its documented designee has granted an exemption after considering the factors in §344.420 of this chapter.

(2) Exemptions may be granted only on a case-by-case basis. The justification for the exemption must be documented.

(3) If the department or facility receives notification of a new conviction or deferred adjudication, the individual may not continue serving in the position unless the juvenile board or its documented designee grants a new exemption in accordance with this subsection. An exemption may not be granted for a conviction or deferred adjudication described in §344.400(a) of this chapter.

(4) An exemption granted under this subsection is valid for the individual only at the juvenile probation department or facility operated by or under contract with the juvenile board granting the exemption.

(5) The exemption is not valid if the person moves to a position requiring certification or if the department or facility seeks certification for the person in a position that allows for optional certification as provided in §344.802 of this chapter; in such cases, prior review and approval from TJJD is required as provided by subsection (a) of this section.

§344.420. Review of Criminal History.

(a) A department or facility must request review from TJJD and receive confirmation from TJJD that approval has been granted before:

(1) hiring, contracting with, or otherwise placing a person with a criminal history described by §344.410(a) of this chapter into a position requiring certification; or

(2) seeking optional certification as provided in §344.802 of this chapter for a person with a criminal history described by §344.410(a) of this chapter.

(b) The purpose of the review by TJJD is to determine whether TJJD will deny a certification for the individual due to ineligibility for certification based on the criminal history. TJJD will conduct the review in accordance with this section.

(c) TJJD will first determine if the criminal history offense(s) directly relate to the duties and responsibilities of the position for which certification is required or sought. In making this determination, TJJD will consider:

(1) the nature and seriousness of the crime(s);

(2) the relationship of the crime(s) to the purposes for requiring a certification to engage in the occupation;

(3) the extent to which a certification might offer an opportunity to engage in further criminal activity of the same type as that in which the person was previously involved;

(4) the relationship of the crime(s) to the ability or capacity required to perform the duties and discharge the responsibilities of the position; and

(5) any correlation between the elements of the crime(s) and the duties and responsibilities of the position.

(d) If TJJD determines the criminal history offense(s) do not directly relate to the duties and responsibilities of the position, TJJD will not deny the certification based on the criminal history.

(e) If TJJD determines the criminal history offense(s) directly relate to the duties and responsibilities of the position, TJJD will consider the following in determining whether to deny certification:

(1) the extent and nature of past criminal activity;

(2) the age of the person when each crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation and rehabilitative effort while incarcerated or after release;

(6) evidence of the person's compliance with any conditions of probation, community supervision, parole, or mandatory supervision; and

(7) any other evidence of the person's fitness to perform the duties of the position requiring certification, including any letters of recommendation.

(f) The individual to be certified is responsible for providing TJJD with the information required by TJJD to make its decision. Failure to timely provide TJJD with requested information may result in a denial of certification.

(g) In making its determinations under this section, TJJD will not consider an arrest that did not result in a conviction or placement on deferred adjudication.

(h) If TJJD determines that the criminal history will not result in a denial of certification, TJJD will inform the individual and the department or facility, which may then proceed, as appropriate, with hiring, contracting with, or otherwise placing the individual into a position requiring certification or with seeking certification for the individual.

(i) If TJJD determines that the criminal history should result in a certification being denied, TJJD will provide the individual with written notice of the reason for the intended denial and will give the individual at least 30 calendar days to submit any relevant information for consideration. The written notice will comport with the requirements

in Section 53.0231, Texas Occupations Code. TJJD will provide a copy of the written notice to the administrative officer of the hiring entity.

(j) Upon receipt of additional information as provided in subsection (i) of this section, TJJD will conduct an additional review in accordance with this section and will provide its final decision to the individual and to the department or facility that requested the initial review.

§344.430. Arrest or Conviction of Current Employees.

(a) This section applies to individuals employed by, under contract with, or otherwise providing services at a department or facility who are certified or for whom the department or facility is seeking certification, whether they are serving in a position requiring certification or in a position for which certification is optional under §344.802 of this chapter.

(b) If a department or facility receives notification that an individual to whom this section applies has been arrested for criminal conduct described in §344.400(a) or §344.410(a) of this chapter, the department or facility must notify TJJD's certification office in writing no later than 10 calendar days after receiving notice of the arrest. The department or facility must provide information regarding the circumstances of the arrest and respond to any questions from TJJD regarding the arrest.

(c) If a department or facility receives notification that an individual to whom this section applies has been convicted of or placed on deferred adjudication for criminal conduct described in §344.400(a) or §344.410(a) of this chapter, the department or facility must:

(1) remove the person from the position requiring certification and from any position allowing the person unsupervised access to juveniles; and

(2) notify TJJD's certification office in writing no later than 10 calendar days after receiving such notice. The department or facility must provide information regarding the conviction or deferred adjudication and respond to any questions from TJJD regarding the disposition.

(d) Upon receipt of a notification under subsection (c) of this section for criminal conduct described in §344.400(a) of this chapter, TJJD will:

(1) deny certification if the person is not yet certified; or

(2) revoke certification if the person is certified.

(e) Upon receipt of a notification under subsection (c) of this section for criminal conduct described in §344.410(a) of this chapter, TJJD will conduct the review described in §344.420 to determine if certification should be denied if the person is not yet certified or if certification should be revoked or suspended if the person is certified.

(f) Notwithstanding subsection (d) of this section, TJJD will revoke or deny certification if the individual is imprisoned following a felony conviction, revocation of community supervision, revocation of probation, or revocation of mandatory supervision.

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 September 12, 2022.

TRD-202203662

Christian von Wupperfeld
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: October 23, 2022
For further information, please call: (512) 490-7278

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37 TAC §344.410

The Texas Juvenile Justice Department (TJJD) proposes to repeal Texas Administrative Code Chapter 344, Subchapter D, §344.410.

SUMMARY OF CHANGES

The repeal of §344.410, concerning Exemption or Variance for Disqualifying Criminal History, will allow for portions of the content to be revised and republished within new §344.410.

FISCAL NOTE

Emily Anderson, Deputy Executive Director, Operations and Finance, has determined that, for each year of the first five years the repeal is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the repeal, under the assumption the repealed section will be readopted in modified form.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Policy Advisor, has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of administering the repeal will be the effective operation of community-based juvenile justice programs and facilities as a result of requiring individuals who have contact with or supervise youth in these settings to be adequately qualified and to have the necessary training and credentials.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. No private real property rights are affected by adoption of this repeal.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the repeal is in effect, the repeal will have the following impacts.

(1) The proposed repeal does not create or eliminate a government program.

(2) The proposed repeal does not require the creation or elimination of employee positions at TJJD.

(3) The proposed repeal does not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed repeal does not impact fees paid to TJJD.

(5) The proposed repeal does not create a new regulation.

(6) The proposed repeal does not expand, limit, or repeal an existing regulation.

(7) The proposed repeal does not increase or decrease the number of individuals subject to the repeal's applicability.

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

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, PO Box 12757, Austin, Texas, 78711, or email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The repeal is proposed under §221.002(a)(3), Human Resources Code, which requires TJJD to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel. The repeal is also proposed under §§222.001, 222.002, and 222.003, Human Resources Code, which establish minimum requirements for appointment in a position requiring certification from TJJD.

No other statute, code, or article is affected by this proposal.

§344.410. Exemption or Variance for Disqualifying Criminal History.

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 September 12, 2022.

TRD-202203663
Christian von Wupperfeld
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: October 23, 2022
For further information, please call: (512) 490-7278

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SUBCHAPTER G. CERTIFICATION

37 TAC §344.804

The Texas Juvenile Justice Department (TJJD) proposes to amend Texas Administrative Code Chapter 344, Subchapter G, §344.804.

SUMMARY OF CHANGES

The amendment to §344.804, concerning Dual Certification, will comprise a nonsubstantive wording change.

FISCAL NOTE

Emily Anderson, Deputy Executive Director, Operations and Finance, has determined that, for each year of the first five years the amended section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Policy Advisor, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be the effective operation of community-based juvenile justice programs and facilities as a result of requiring individuals who have contact with or supervise youth in these settings to be adequately qualified and to have the necessary training and credentials.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the proposed section is in effect, the section will have the following impacts.

(1) The proposed section does not create or eliminate a government program.

(2) The proposed section does not require the creation or elimination of employee positions at TJJD.

(3) The proposed section does not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed section does not impact fees paid to TJJD.

(5) The proposed section does not create a new regulation.

(6) The proposed section does not expand, limit, or repeal an existing regulation.

(7) The proposed section does not increase or decrease the number of individuals subject to the section's applicability.

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

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, PO Box 12757, Austin, Texas, 78711, or email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The amended section is proposed under §221.002(a)(3), Human Resources Code, which requires TJJD to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel. The amended section is also proposed under §§222.001, 222.002, and 222.003, Human Resources Code, which establish minimum requirements for appointment in a position requiring certification from TJJD.

No other statute, code, or article is affected by this proposal.

§344.804. Dual Certification.

(a) Individuals may hold more than one certification by TJJD if they meet all criteria required for each certification and their job duties are consistent with all certifications held, except as noted in subsection (b) of this section.

(b) An individual may not hold an active certification as a juvenile supervision officer and as a community activities officer unless the individual [~~individually~~] is concurrently employed by more than one department or facility.

(c) Training received may be used for credit toward more than one type of TJJD-issued certification if the topic is relevant to each certification sought or held.

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 September 12, 2022.

TRD-202203664
Christian von Wupperfeld
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: October 23, 2022
For further information, please call: (512) 490-7278

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 5. TEXAS VETERANS LAND BOARD

CHAPTER 175. GENERAL RULES OF THE VETERANS LAND BOARD

SUBCHAPTER A. GENERAL RULES AND CONTRACTING FINANCING

40 TAC §175.2

The Texas Veterans Land Board (VLB) proposes an amendment to 40 Texas Administrative Code (TAC) §175.2 amending the definition of an eligible Texas Veteran. The Veterans Land Board will be adding the United States Space Force (USSF) as an eligible branch of service.

BACKGROUND OF THE PROPOSED AMENDMENTS

The National Defense Authorization Act of 2020 amended 10 U.S.C. effective December 20, 2019, establishing the United States Space Force (USSF) as the newest branch of the United States Armed Forces. Current and discharged members of the USSF or USSF Reserves, may be eligible for VA home loan benefits upon meeting length-of-service (LOS), and character-of-service (COS) requirements. Qualifying Surviving Spouses of Veterans who served in the USSF may also be eligible for the VA home loan benefit. On June 23, 2022, the Veterans Administration issued a Certificate of Eligibility (COE) Update (Circular 26-22-10) announcing a COE enhancement to include the USSF as a branch of service.

FISCAL AND EMPLOYMENT IMPACTS

Mr. Raul Gonzales, Deputy Director for the VLB, has determined that for each year of the first five years the amended rule as proposed is in effect, there will be minimal, if any, fiscal implications to the state government as a result of administering the amended rule. Mr. Gonzales has also determined that for each year of the first five years the proposed amendments are in effect, there will be no impacts to the local economy.

Mr. Gonzales has determined that there will be no fiscal implications to the local government or additional costs of compliance for large and small businesses or individuals resulting from the proposed amendment. VLB has determined that the proposed rulemaking will have no adverse local employment and that no impact statement is required pursuant to Texas Government Code §2001.022.

PUBLIC BENEFIT

Mr. Gonzales has determined that the public will benefit from the proposed amendment by adding the United State Space Force as an eligible branch of service.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P. O. Box 12873, Austin, TX 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal

STATUTORY AUTHORITY

The amendments are proposed under Texas Natural Resources Code §161.001(b), that provides that the Board may by rule change the definition of "veteran" as necessary or appropriate to protect the best interests of the program.

§175.2 Loan Eligibility Requirements

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

(c) To be eligible to participate in the program, an applicant must satisfy one of the following:

(1) be a person who:

(A) is at least 18 years of age;

(B) is a bona fide resident of Texas at the time of application for a loan. Military personnel on active duty, who otherwise meet the requirements of this subsection are eligible even though stationed outside of Texas at the time of application;

(C) satisfied one of the following service requirements after September 16, 1940:

(i) has served not less than 90 cumulative days of active duty or active duty training time in the Army, Navy, Air Force, Coast Guard, Marine Corps, United States Space Force, United States Public Health Service, or a recognized reserve component of one of the listed branches of service, unless discharged earlier because of a service-connected cause;

(ii) - (iv) (No change.)

(D) - (E) (No change.)

(2) (No change.)

(d) - (h) (No change.)

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

Filed with the Office of the Secretary of State on September 8, 2022.

TRD-202203614
Mark Havens
Chief Clerk, Deputy Land Commissioner
Texas Veterans Land Board
Earliest possible date of adoption: October 23, 2022
For further information, please call: (512) 475-1859

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 64. ADDRESS CONFIDENTIALITY PROGRAM

The Office of the Attorney General (OAG) adopts a new Chapter 64 that addresses the administration of the Address Confidentiality Program. New Chapter 64 contains the same regulations as the former Chapter 61, Subchapter K, which is repealed. This is part of a reorganization of the crime victim services rules. These rules are adopted with minor non-substantive edits to the proposed text as published in the April 15, 2022, issue of the *Texas Register* (47 TexReg 1964). The rules will be republished.

EXPLANATION AND JUSTIFICATION OF RULES

The OAG adopts new Chapter 64 as part of a substantive reorganization of Chapter 61 to conform with the recodification and citation updates to the Texas Code of Criminal Procedure in House Bill 4173, 86th Regular Session (2019). Specifically, the administrative rules currently governing the Address Confidentiality Program (ACP) and sexual assault forensic medical exam compensation are published within the same chapter of administrative rules as the Crime Victims' Compensation (CVC) Program (1 TAC Chapter 61). Under the revised chapters of the Code of Criminal Procedure, however, the CVC Program, the ACP, and sexual assault forensic medical exam compensation are now published in different statutory chapters (Chapters 56A, 56B, and 58). Therefore, new administrative rule chapters are appropriate and more accurately reflect the rulemaking and statutory authorities for these agency functions. The OAG is replacing former Chapter 61, Subchapter K, which is repealed, with new Chapter 64 that addresses the administration of the Address Confidentiality Program.

Chapter 64, §§64.1 - 64.8, 64.10, 64.11, 64.20, 64.21, 64.30, 64.31, 64.40, 64.41, 64.50 and 64.60, as adopted, includes definitions of statutory terms, clarifies agency exemptions and exceptions allowing disclosures, restates program eligibility requirements, describes how participation may be terminated, canceled, or renewed, and outlines the administrative appeal procedures for adverse actions. The adopted rules are identical, or substantially similar, to former Subchapter K of Chapter 61.

Chapter 64 is adopted pursuant to Texas Code of Criminal Procedure articles 56A.256 and 56A.309. Texas Code of Criminal Procedure articles 56A.256 and 56A.309 direct the OAG to adopt rules to implement Title 1, Chapter 56A, Subchapters F and G of the Code of Criminal Procedure.

SECTION-BY-SECTION SUMMARY

Adopted new chapter 64 applies to the creation and administration of the Address Confidentiality Program.

Adopted §64.1 addresses the scope and construction of chapter 64. This adopted section reflects the 2019 amendments to the Texas Code of Criminal Procedure Chapter 58. *See also* Tex. Code Crim. Proc. art. 58.052(e).

Adopted §64.2 addresses definitions. This adopted section is almost identical to former §61.1001. One change is that the definition of "victim of family violence" in §61.1001(a)(20) is removed due to redundancy. *See also* Tex. Code Crim. Proc. art. 58.051. This section defines terms used in the chapter.

Adopted §64.3 discusses the ACP. This adopted section is almost identical to former §61.1005. Subsections (a), (b), and (c) are also reorganized from §61.1005(a) and (b). *See also* Tex. Code Crim. Proc. art. 58.052. This rule outlines the types of victims eligible for the program and the duties assigned to the OAG in administering it.

Adopted §64.4 discusses the acceptance of a substitute address. This adopted section is almost identical to former §61.1025. *See also* Tex. Code Crim. Proc. art. 58.053. Adopted §64.4 requires state or local agencies to accept the ACP post office box in lieu of a true address.

Adopted §64.5 addresses mail that cannot be forwarded. This adopted section is almost identical to former §61.1065. This section limits the ACP to only forward first-class mail. For any non-first-class mail that the ACP receives, ACP staff will take action in accordance with USPS laws.

Adopted §64.6 addresses the destruction of participant information after participation ends. This adopted section has almost identical language to former §61.1080. *See also* Tex. Code Crim. Proc. art. 58.060. The OAG will destroy an ACP participant's information on the third anniversary of the date participation in the ACP ends or after the date an application has been denied.

Adopted §64.7 discusses voter registration. This adopted section is substantially similar to former §61.1085. Participants in the ACP are responsible for complying with all laws and regulations governing voting registration. Language is adopted to cross-reference the Texas Secretary of State website and related rules addressing additional instructions and forms.

Adopted §64.8 concerns state or local agency responsibility. This adopted section has almost identical language to former §61.1090. State and local agencies must comply with the ACP statutes.

Adopted §64.10 addresses ACP requirements. This adopted section has almost identical language to former §61.1015. *See also* Tex. Code Crim. Proc. arts. 58.055 and 58.056. This section outlines the requirements for program participation.

Adopted §64.11 discusses certification of ACP Participation. This adopted section contains almost identical language to former §61.1020. *See also* Tex. Code Crim. Proc. art. 58.059. An ACP authorization card certifies a person's participation.

Adopted §64.20 discusses eligibility to participate in the ACP. This adopted section contains almost identical language to former §61.1010. *See also* Tex. Code Crim. Proc. arts. 58.054 and 58.056. This section describes the statutory eligibility requirements to participate in the program.

Adopted §64.21 addresses participation renewal. This adopted section contains almost identical language to former §64.1020(d). *See also* Tex. Code Crim. Proc. art. 58.059(c). Upon expiration of certification, participants may renew participation using the same initial incident as the basis for continued eligibility.

Adopted §64.30 concerns ACP participation denial or cancellation. This adopted section contains almost identical language to former §61.1030. *See also* Tex. Code Crim. Proc. arts. 58.057 and 58.058. This section lists the reasons participation may be denied or canceled.

Adopted §64.31 discusses how to withdraw from the ACP. This adopted section contains almost identical language to former §61.1060. *See also* Tex. Code Crim. Proc. art. 58.058. To withdraw from the ACP, a participant must submit a signed written request.

Adopted §64.40 addresses a request for an agency exemption from accepting the ACP address. This adopted section contains almost identical language to former §61.1040. *See also* Tex. Code Crim. Proc. art. 58.053(b). A state or local agency may request an exemption from accepting the ACP address in lieu of a true address by submitting an explanation and supporting documentation to show exemption is necessary to the OAG.

Adopted §64.41 addresses a request for reconsideration of §64.40 exemption denial determination. This adopted section contains almost identical language to former §61.1045. A state or local agency denied a §64.40 exemption may request reconsideration of the OAG decision within 30 days.

Adopted §64.50 discusses other exceptions to accepting the ACP address. This adopted section updates former §61.1050. *See* Tex. Code Crim. Proc. art. 58.061. This section describes how a law enforcement agency, the Texas Department of Family and Protective Services, or the Texas Department of State Health Services may request a participant's true address in certain circumstances. Subsection (c) is revised to remove a reference to the Public Information Act and to direct requests to the Crime Victim Services Division directly by mail, fax, or email to implement Texas Code of Criminal Procedure article 58.061.

Adopted §64.60 addresses a request for reconsideration of an ACP application. This adopted section is almost identical to former §61.1035. An applicant or participant denied, canceled, or withdrawn from the ACP may request reconsideration of the OAG decision within 30 days.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

Gene McCleskey, Chief, Crime Victim Services Division for the agency, has determined that for the first five-year period the adopted rule is in effect, there are no foreseeable costs or revenues for state or local governments as a result of enforcing or administering this rule as adopted because this rule only replaces Chapter 61, Subchapter K, without substantive amendments.

PUBLIC BENEFIT AND COST NOTE

Mr. McCleskey has determined that for the first five-year period the adopted rule is in effect, the public cost will be zero because the rule does not add any duties, responsibilities, or expenses which are not already required and appropriated to implement the statute. He further has determined there will be no probable economic cost to persons required to comply with the chapter because the substitution of one address for the P.O. Box will have the same expense.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY

There is no effect on any local economy for the first five years the adopted rule is in effect because the rule does not add any duties, responsibilities, or expenses which are not already required since the rule only reorganizes current regulations. Therefore, no economic impact statement or local employment impact statement is required under Texas Government Code §2001.022.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES

Mr. McCleskey has also determined that there will not be an impact on rural communities, small businesses, or micro-businesses resulting from implementation of the adopted rule. The rule does not add any duties, responsibilities, or expenses since it merely reorganizes current regulations. Therefore, no regulatory flexibility analysis is required per Texas Government Code §2006.002.

TAKINGS IMPACT ASSESSMENT

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

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with Texas Government Code §2001.0221, the agency has prepared a government growth impact statement. During the first five years the adopted rule is in effect, the adopted rule:

- will not create or eliminate a government program;

- will not result in an increase or decrease in the number of agency employees;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not lead to an increase or decrease in fees paid to a state agency;

- will create a new regulation;

- will not repeal an existing regulation;

- will not result in an increase or decrease in the number of individuals subject to the rule; and

- will not positively or adversely affect the state's economy because it is reorganizing an existing chapter that is already in effect.

PUBLIC COMMENT

The rule proposal was published in the April 15, 2022, issue of the *Texas Register* (47 TexReg 1964). The deadline for public comment was May 16, 2022. The OAG did not receive any comments from interested parties on the rule proposal during the 30-day public comment period.

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §§64.1 - 64.8

STATUTORY AUTHORITY. New chapter 64, Subchapter A is adopted pursuant to the Texas Code of Criminal Procedure article 58.052. Article 58.052 directs the Attorney General to adopt rules to administer an address confidentiality program to assist a victim of family violence, sexual assault or abuse, stalking, or trafficking of persons in maintaining a confidential address.

§64.1. Scope and Construction of Rules.

This chapter applies to the administration of the Texas Address Confidentiality Program (ACP) created by Texas Code of Criminal Procedure chapter 58, subchapter B. The Office of the Attorney General (OAG) adopts this chapter pursuant to Texas Code of Criminal Procedure article 58.052 and consistent with chapter 58, subchapter B.

§64.2. Definitions.

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

(1) "Applicant" is a person who submits an application to the OAG to enroll in the ACP.

(2) "Application" is the document requesting to participate in the ACP, including all information and documents submitted by, or on behalf of, the applicant.

(3) "Certification" means OAG authorization for an applicant to participate in the ACP.

(4) "Certified mail" is any first-class letter-size or flat-size mail for which the mailer pays a surcharge to the United States Postal Service (USPS) to be provided with a receipt, and the USPS records delivery of the mail. Certified mail does not include a package regardless of size or type of mailing.

(5) "Counseling" means victim-related guidance, advice, and support with crisis intervention, obtaining information, legal advocacy, prevention of further harm, or meeting other physical, emotional, or psychological needs.

(6) "Family violence" has the same definition as in Texas Family Code §71.004.

(7) "First Class Mail" is designated by the USPS as:

(A) Letter-size mail, as defined in the USPS Domestic Mail Manual, is mail that is not less than 5 inches long or more than 11 1/2 inches long, and not less than 0.007 inches thick or more than 1/4 inch thick. Letter-size mail may not weigh more than 3.5 ounces.

(B) Flat-size mail, as defined in the USPS Domestic Mail Manual, is mail not more than 15 inches long, more than 12 inches high or more than 3/4 inches thick. Flat-size mail may not weigh more than 13 ounces.

(8) "Household" is a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other, as defined in Texas Family Code §71.005.

(9) "Other entity" means an organization or group, whether for profit or nonprofit, that provides the services of a victim's assistance counselor, counseling, or shelter services to victims of family violence, sexual assault, stalking, or trafficking of persons.

(10) "Package" must have the same meaning as parcel, as defined in the USPS Domestic Mail Manual. Parcel is mail that does not meet the mail processing category of letter-size mail or flat-size mail.

(11) "Participant" is a person who has applied and been enrolled into the ACP, including all members of the applicant's household whose address is the same.

(12) "Sexual offense" includes the terms "sexual assault" as defined in Texas Penal Code §22.011, "aggravated sexual assault" as defined in Texas Penal Code §22.021, or "prohibited sexual conduct" as defined in Texas Penal Code §25.02.

(13) "Shelter services" are provided directly, by referral, or through formal arrangements with other agencies and include:

(A) 24-hour-a-day shelter;

(B) a crisis hotline available 24 hours a day;

(C) emergency medical care;

(D) intervention services, including safety planning, understanding and support, information, education, referrals, resource assistance, and individual service plans;

(E) emergency transportation;

(F) legal assistance in the civil and criminal justice systems, including identifying individual needs, legal rights, and legal options, as well as providing support and accompaniment in pursuing those options;

(G) information about educational arrangements for children;

(H) information about training for and seeking employment; or

(I) a referral system to existing community services.

(14) "Stalking" has the meaning assigned by Texas Penal Code §42.072.

(15) "State or local agency" includes, but is not limited to, a governmental agency of the State of Texas or a Texas county, city, town, or municipality.

(16) "Texas resident" is a person who has a domicile in, lives for more than a temporary period, or who can show intent to establish a domicile in Texas either at the time of the crime or during the duration of participation in the program. Documentary evidence of the applicant's Texas residency may be established by submitting the following documentation in the name of the applicant:

(A) a lease or rental agreement;

(B) utility bills;

(C) school or work records;

(D) a driver's license;

(E) postmarked mail delivered to the applicant at the Texas residence or intended Texas residence;

(F) written verification from a victim's assistance counselor; or

(G) other documentation approved by the OAG.

(17) "Trafficking of Persons" has the meaning assigned by Texas Code of Criminal Procedure Article 58.001(11).

(18) "True Address" is the physical address where the applicant actually resides, is employed, or attends school.

(19) "Victim's Assistance Counselor" is an individual authorized by a state or local agency or other for profit or nonprofit entity to meet with or assist individuals applying for participation in the ACP.

(b) The definitions in this chapter will be given their most reasonable meaning unless the content clearly indicates otherwise.

§64.3. Address Confidentiality Program (ACP).

(a) The ACP assists victims of family violence, sexual offenses, stalking, and trafficking of persons by authorizing the use of an OAG-maintained confidential mailing address.

(b) The OAG will:

(1) designate a substitute post office box address for participants to use in place of the participant's true residential, business, or school address;

(2) act as agent to receive service of process and mail on behalf of the participant; or

(3) forward to the participant first-class mail.

(c) The OAG will not forward packages.

(d) A summons, writ, notice, demand, or process may be served on the OAG on behalf of the participant by delivery of two copies of the document to the OAG. The OAG will retain a copy of the summons, writ, notice, demand, or process and forward the original to the participant via first class or certified mail not later than the third day after the date of service on the OAG.

(e) The OAG may not make a copy of a participant's mail received by the OAG, except that the OAG will retain a copy of the envelope in which certified mail is received on behalf of the participant.

(f) The attorney general or an agent or employee of the attorney general is immune from liability for any act or omission by the agent or employee in administering the ACP if the agent or employee was acting in good faith and within the course and scope of assigned responsibilities and duties.

(g) An agent or employee of the attorney general who does not act in good faith and within the course and scope of assigned responsibilities and duties in disclosing a participant's true residential, business, or school address is subject to prosecution under Chapter 39, Texas Penal Code.

(h) The OAG is not responsible for updating or modifying the participant's public records regarding the substitute address. ACP participants remain personally responsible for compliance with all applicable federal, state, and local laws and regulations, including those which require a physical address.

(i) The OAG is not responsible for tracking or otherwise maintaining mail or records of mail received on behalf of a participant.

(j) The OAG is not responsible for notifying any person or entity of the expiration or cancellation of the participant's participation in the ACP.

(k) Upon a final determination of the expiration or cancellation of the participant's participation in the ACP, the OAG will return the participant's mail to sender.

§64.4. Acceptance of Substitute Address.

A state or local agency must accept the substitute post office box address designated by the OAG if the substitute address is presented to the agency by a participant in place of the participant's true residential, business, or school address.

§64.5. Mail That Cannot Be Forwarded.

The OAG will forward only first-class mail to a participant. For any non-first-class mail that OAG receives, OAG will take action in accordance with USPS laws, regulations, and guidelines, including, but not limited to, returning mail to the sender or refusing to accept delivery of such mail.

§64.6. Destruction of Information.

(a) The OAG will destroy all information relating to a participant on the third anniversary of the date participation in the ACP ends.

(b) The OAG will destroy all information relating to a denied application on the third anniversary of the date of the denial.

§64.7. Voter Registration.

A participant who desires to register to vote is responsible for compliance with the requirements of the registrar of the county in which the participant resides and all other applicable federal, state, and local laws and regulations. Instructions and forms for are published online by the Secretary of State. The rules applying to confidentiality of voting records for ACP participants are in Texas Administrative Code, Title 1, Chapter 81, §81.38(b).

§64.8. State or Local Agency Responsibility.

A state or local agency that accepts an ACP participant's substitute post office box address is responsible for the administration of its rules and regulations in compliance with Texas Code of Criminal Procedure Chapter 58.

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 September 6, 2022.

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Austin Kinghorn
General Counsel
Office of the Attorney General
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Proposal publication date: April 15, 2022
For further information, please call: (512) 936-1200

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SUBCHAPTER B. APPLICATION FOR ADDRESS CONFIDENTIALITY PROGRAM PARTICIPATION

1 TAC §64.10, §64.11

STATUTORY AUTHORITY. New chapter 64, Subchapter B is adopted pursuant to the Texas Code of Criminal Procedure article 58.052. Article 58.052 directs the Attorney General to adopt rules to administer an address confidentiality program to assist a victim of family violence, sexual assault or abuse, stalking, or trafficking of persons in maintaining a confidential address.

CROSS-REFERENCE TO STATUTE. No other regulations or statutes are affected by this adopted change.

§64.10. Requirements.

(a) An application must be submitted through the form published on the OAG website, and must be signed, dated, and affirm the following:

(1) the applicant fears for the safety of the applicant, the applicant's child, or another person in the applicant's household because of threat of immediate or future harm by a person alleged to have committed family violence, a sexual offense, stalking, or trafficking of persons;

(2) the applicant lives at, or will relocate to, a residential address that is, to the best of their knowledge, unknown to the person who committed the alleged family violence, sexual offense, stalking, or trafficking of persons;

(3) if there is an existing court order or a pending court case for child support or child custody or visitation that involves the applicant, the name of the legal counsel of record and each parent involved in the court order or pending case; and

(4) the applicant designates the OAG as agent to receive service of process and mail on behalf of the applicant.

(b) In addition to the application, the OAG may require an applicant to submit independent documentary evidence that family violence, a sexual offense, stalking, or trafficking of persons occurred. Independent documentary evidence may include, but is not limited to:

(1) an active or recently issued protective order;

(2) an incident report or other record maintained by a law enforcement agency or official;

(3) a statement from a physician or other health care provider regarding the applicant's medical condition as a result of the family violence, sexual offense, stalking, or trafficking of persons;

(4) a statement from a mental health professional, a member of the clergy, an attorney or other legal advocate, a trained staff member of a family violence center, or another professional who has assisted the applicant in addressing the effects of the family violence, sexual offense, stalking, or trafficking of persons; or

(5) any other information the OAG deems appropriate.

§64.11. Certification of Address Confidentiality Program Participation.

(a) The OAG will review and, if appropriate, approve the applicant's application and certify the applicant's participation in the ACP.

(b) Upon certification into the ACP, the OAG will issue an ACP authorization card (ACP card) to the ACP participant. The ACP card is valid as long as the ACP participant remains certified under the ACP.

(1) An ACP card is property of the OAG and must be surrendered or destroyed upon cancellation of participation in the ACP.(2) An ACP card is an official governmental record and is void if altered, sold, or damaged.

(3) Participants may request a new ACP card in the event the card is lost, stolen, or destroyed.

(4) The OAG may issue and replace ACP cards upon certification or request for a replacement ACP card.

(c) Certification for participation in the ACP expires on the third anniversary of the date of certification.

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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Austin Kinghorn
General Counsel
Office of the Attorney General
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For further information, please call: (512) 936-1200

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SUBCHAPTER C. PROGRAM ELIGIBILITY

1 TAC §64.20, §64.21

STATUTORY AUTHORITY. New chapter 64, Subchapter C is adopted pursuant to the Texas Code of Criminal Procedure article 58.052. Article 58.052 directs the Attorney General to adopt rules to administer an address confidentiality program to assist a victim of family violence, sexual assault or abuse, stalking, or trafficking of persons in maintaining a confidential address.

CROSS-REFERENCE TO STATUTE. No other regulations or statutes are affected by this adopted change.

§64.20. Eligibility to Participate in the Address Confidentiality Program.

(a) An applicant is eligible for participation in the ACP if:

(1) they have met with a victim's assistance counselor from an entity that is identified by the OAG as one that provides shelter housing, civil legal services, or counseling to victims of family violence, sexual assault or abuse, stalking, or trafficking of persons;

(2) they or a household member are protected under, or have filed an application for an order of protection, under:

(A) a temporary injunction issued under Subchapter F, Chapter 6, Texas Family Code;

(B) a temporary ex parte order issued under Chapter 83, Texas Family Code;

(C) an order issued under Subchapter A or B, Chapter 7B, of Texas Code of Criminal Procedure or Chapter 85, Texas Family Code; or

(D) a magistrate's order for emergency protection issued under Article 17.292, Texas Code of Criminal Procedure; or

(3) they possess other documentation as described in §64.10 of this chapter.

(b) If an applicant does not submit supporting documentation and relies upon a certification by a crime victim service provider, the applicant must:

(1) meet with a crime victim assistance counselor from a state or local agency or other entity;

(2) file the application from or through that agency; and

(3) include the name, title, and signature of the crime victim assistance counselor or advocate who met with and assisted the applicant in the preparation of the application.

§64.21. Renewal of Participation.

To renew a certification under Texas Code of Criminal Procedure Article 58.059(c), an ACP participant must submit a new application that complies with §64.10. An applicant may use the same incident of fam-

ily violence, sexual offense, stalking, or trafficking of persons as the basis for renewal of their application for participation. An application for renewal will be treated as an original application.

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 , 2022.

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General Counsel
Office of the Attorney General
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For further information, please call: (512) 936-1200

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SUBCHAPTER D. PARTICIPATION TERMINATION

1 TAC §64.30, §64.31

STATUTORY AUTHORITY. New chapter 64, Subchapter D is adopted pursuant to the Texas Code of Criminal Procedure article 58.052. Article 58.052 directs the Attorney General to adopt rules to administer an address confidentiality program to assist a victim of family violence, sexual assault or abuse, stalking, or trafficking of persons in maintaining a confidential address.

CROSS-REFERENCE TO STATUTE. No other regulations or statutes are affected by this adopted change.

§64.30. Denial or Cancellation.

(a) A participant may be excluded from participation in the ACP if:

(1) mail forwarded to the participant by the OAG is returned as undeliverable on at least four occasions;

(2) the participant changes the participant's true residential address as provided in the application filed by the participant, and does not submit an OAG Change of Address form notifying the OAG at least 10 business days before the date of the address change; or

(3) the participant changes the participant's name.

(b) If an application for the ACP is denied or participation in the ACP is canceled, the OAG will send the applicant or participant a written determination and reason for the denial or cancellation.

§64.31. Participation Withdrawal.

A participant may withdraw from participation in the ACP at any time by submitting a signed written request. A Withdrawal Form is located on the OAG website but is not required.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202203505
Austin Kinghorn
General Counsel
Office of the Attorney General
Effective date: September 26, 2022
Proposal publication date: April 15, 2022
For further information, please call: (512) 936-1200

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SUBCHAPTER E. GOVERNMENTAL AGENCY EXEMPTIONS

1 TAC §64.40, §64.41

STATUTORY AUTHORITY. New chapter 64, Subchapter E is adopted pursuant to the Texas Code of Criminal Procedure article 58.052. Article 58.052 directs the Attorney General to adopt rules to administer an address confidentiality program to assist a victim of family violence, sexual assault or abuse, stalking, or trafficking of persons in maintaining a confidential address.

CROSS-REFERENCE TO STATUTE. No other regulations or statutes are affected by this adopted change.

§64.40. Request for Agency Exemption.

(a) An agency may seek an exemption determination from the OAG under Texas Code of Criminal Procedure Article 58.053(a) to require a participant to provide the participant's true residential, business, or school address. To seek an exemption determination, the agency must file an OAG Request for Agency Exemption form that includes, but is not limited to, the following information:

(1) the name of the agency along with an explanation and supporting documentation that shows the exemption is necessary for the agency to perform a duty or function that is imposed by law or administrative requirement;

(2) the name and title of the individual authorized to make the request on behalf of the agency;

(3) verification that the requestor will maintain the confidentiality of the participant's true residential, business, or school address; and

(4) verification by the agency representative affirming that the information submitted is correct.

(b) The OAG may require additional information deemed necessary by the OAG.

(c) The OAG will issue a written determination as soon as practicable.

(d) An agency may submit a request for an exemption determination at any time even if there is no current need for the exemption at the agency.

(e) An agency previously denied an exemption may reapply in the event of new information.

§64.41. Request for Reconsideration of Exemption Denial.

(a) If an agency is denied an exemption under Texas Code of Criminal Procedure Article 58.053(b), an agency has 30 days from the date of the exemption denial to submit a written request for reconsideration to the OAG, along with supporting documentation. The OAG may require additional information as deemed necessary.

(b) The OAG will issue a written determination on the agency's request for reconsideration based on the evidence submitted.

(c) The OAG's decision is final.

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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Austin Kinghorn
General Counsel
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SUBCHAPTER F. ADDRESS DISCLOSURE EXCEPTIONS

1 TAC §64.50

STATUTORY AUTHORITY. New chapter 64, Subchapter F is adopted pursuant to the Texas Code of Criminal Procedure article 58.052. Article 58.052 directs the Attorney General to adopt rules to administer an address confidentiality program to assist a victim of family violence, sexual assault or abuse, stalking, or trafficking of persons in maintaining a confidential address.

CROSS-REFERENCE TO STATUTE. No other regulations or statutes are affected by this adopted change.

§64.50. Exceptions.

(a) Pursuant to Texas Code of Criminal Procedure Article 58.061, the OAG will disclose a participant's true residential, business, or school address if requested by:

(1) a law enforcement agency;

(2) the Department of Family and Protective Services for the purpose of conducting a child protective services investigation under Texas Family Code Chapter 261; or

(3) the Department of State Health Services or a local health authority for the purpose of making a notification of a communicable disease described under Texas Code of Criminal Procedure Article 21.31, Texas Family Code §54.033, or Texas Health and Safety Code §81.051.

(b) Pursuant to Texas Code of Criminal Procedure Article 58.104, the OAG will disclose a participant's true residential, business, or school address if required by a court order.

(c) A request for disclosure of a participant's true residential, business, or school address from an agency pursuant to this section must be submitted to the Address Confidentiality Program via mail, fax, or email, along with any supporting documentation, such as the following information:

(1) the name of the agency requesting the disclosure and the statutory exception upon which the agency bases its request;

(2) the name and title of the individual authorized to make the request on behalf of the agency;

(3) a signed statement by the agency representative affirming that the information submitted is correct; and

(4) an original certified copy of the court order, if applicable.

(d) The OAG may require additional information as deemed necessary.

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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Austin Kinghorn
General Counsel
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SUBCHAPTER G. ADMINISTRATIVE REMEDIES

1 TAC §64.60

STATUTORY AUTHORITY. New chapter 64, Subchapter G is adopted pursuant to the Texas Code of Criminal Procedure article 58.052. Article 58.052 directs the Attorney General to adopt rules to administer an address confidentiality program to assist a victim of family violence, sexual assault or abuse, stalking, or trafficking of persons in maintaining a confidential address.

CROSS-REFERENCE TO STATUTE. No other regulations or statutes are affected by this adopted change.

§64.60. Request for Reconsideration.

(a) An ACP applicant or participant has 30 days from the date of the OAG's denial or cancellation to seek reconsideration. The OAG may require additional information as deemed necessary. If the applicant or participant fails to seek reconsideration within the 30-day time period, the decision of the OAG becomes final.

(b) The OAG will issue a written determination on the request for reconsideration based on the evidence submitted.

(c) The OAG's determination on the request for reconsideration is final.

(d) If an application for the ACP is denied or participation in the ACP is canceled, the applicant or participant may reapply in the event of a new qualifying incident.

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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Austin Kinghorn
General Counsel
Office of the Attorney General
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For further information, please call: (512) 936-1200

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") adopts without changes amendments 10 Texas Administrative Code, Chapter 80, §§80.3, 80.30 and 80.38 relating to the regulation of the manufactured housing program. The rule revisions update eliminates the Field Verification Inspection Fee and makes changes for clarification purposes. The rules are adopted without changes from the published proposed rules; therefore, the rules will not be republished in the *Texas Register.*

The proposed amendments were published in the May 6, 2022, issue of the *Texas Register* (47 TexReg 2637).

The adoption of the rules are effective thirty (30) days following the date of publication in the *Texas Register.*

The rules as proposed on May 6, 2022, are adopted as final rules.

There were no request for a public hearing to take comments on the rules.

There was one comment received by email that appeared to be a misunderstanding relating to eliminating the Field Verification Inspection. The commenter appeared to interpret the proposal as eliminating all inspections. The Manufactured Housing Division responded to the commenter that the Field Verification Inspection is not a statutory requirement and ensured the commenter the Department will continue to conduct inspections on manufactured homes installed, consumer complaint investigations and all other inspections required per the Texas Manufactured Housing Standards Act.

The following is a restatement of the rules' factual basis:

10 Texas Administration Code §80.3(j) is adopted without changes to remove the Field Verification Inspection fee of $100, as the Department lacks the resources to complete these inspections and the Manufactured Housing Division is not statutorily required to provide this service.

10 Texas Administration Code §80.30(a) is adopted without changes to clarify that a licensee may maintain their files electronically as long as the Department has access upon request.

10 Texas Administration Code §80.38(c) is adopted without changes to add new subsection (c) to clarify that a licensee must deliver the Formaldehyde Health Notice to the consumer before the execution of a mutually binding sales agreement or retail installment sales contract and may not transfer ownership unless the consumer receives prior delivery of the form.

SUBCHAPTER A. CODES, STANDARDS, TERMS, FEES AND ADMINISTRATION

10 TAC §80.3

The amended rules are adopted under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by adoption of the amended rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 9, 2022.

TRD-202203630
Jim R. Hicks
Executive Director
Texas Department of Housing and Community Affairs
Effective date: October 23, 2022
Proposal publication date: May 6, 2022
For further information, please call: (512) 475-2206

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SUBCHAPTER C. LICENSEES' RESPONSIBILITIES AND REQUIREMENTS

10 TAC §80.30, §80.38

The amended rules are adopted under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by adoption of the amended rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Jim R. Hicks
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-2206

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts the repeal of §37.420, concerning the Sickle Cell Advisory Committee (SCAC) and adopts new §37.420, concerning the Sickle Cell Task Force (Task Force). The repeal and new rule for §37.420 are adopted without changes to the proposed text as published in the June 24, 2022, issue of the *Texas Register* (47 TexReg 3653). The repeal and new rule will not be republished.

BACKGROUND AND JUSTIFICATION

The repeal and new rule are necessary to comply with state legislation. Per Texas Government Code, §2110.008, Duration of Advisory Committees, the SCAC was abolished effective September 1, 2018.

The new rule for §37.420, Sickle Cell Task Force, replaces the repealed section for the SCAC. The Task Force was established in accordance with House Bill 3405, 86th Legislature, Regular Session, 2019, and promulgated under the Texas Health and Safety Code, Chapter 50 (redesignated as Texas Health and Safety Code, Chapter 52 per House Bill 3607, 87th Legislature, Regular Session, 2021). The Task Force was created to continue the work of the SCAC. The new rule establishes the Task Force and describes Task Force composition, roles, responsibilities, and abolishment date.

COMMENTS

On July 25, 2022, the 31-day comment period ended.

During this period, DSHS did not receive any comments regarding the proposed rules.

SUBCHAPTER R. ADVISORY COMMITTEES

25 TAC §37.420

STATUTORY AUTHORITY

The repeal is authorized under Texas Health and Safety Code §52.0001, which authorizes the Executive Commissioner of HHSC to establish and maintain a Task Force to raise awareness of sickle cell disease and sickle cell trait; Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules and policies necessary for the operation and provision of services by the health and human services agencies; and Texas Health and Safety Code §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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 September 9, 2022.

TRD-202203632
Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: September 29, 2022
Proposal publication date: June 24, 2022
For further information, please call: (512) 776-2600

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25 TAC §37.420

STATUTORY AUTHORITY

The new rule is authorized under Texas Health and Safety Code §52.0001, which authorizes the Executive Commissioner of HHSC to establish and maintain a Task Force to raise awareness of sickle cell disease and sickle cell trait; Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules and policies necessary for the operation and provision of services by the health and human services agencies; and Texas Health and Safety Code §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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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Cynthia Hernandez
General Counsel
Department of State Health Services
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Proposal publication date: June 24, 2022
For further information, please call: (512) 776-2600

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CHAPTER 133. HOSPITAL LICENSING
SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §133.51

The Texas Health and Human Services Commission (HHSC) adopts new §133.51, concerning In-Person Visitation During a Public Health Emergency or Disaster.

New §133.51 is adopted without changes to the proposed text as published in the June 24, 2022, issue of the *Texas Register* (47 TexReg 3655). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The new section is necessary to comply with Senate Bill (S.B.) 572, 87th Legislature, 2021, Regular Session. S.B. 572 requires HHSC to adopt rules establishing guidelines for certain health care facilities, including hospitals and special care facilities, to use when developing policies and procedures for in-person religious counselor visitation during a public health emergency, as required under Texas Health and Safety Code Chapter 260C.

The new section also ensures consistency with House Bill (H.B.) 2211, 87th Legislature, 2021, Regular Session. H.B. 2211 requires a hospital to permit, except under certain circumstances, in-person visitation with hospital patients during a qualifying period of disaster and allows the hospital to condition this visitation upon compliance with certain authorized health and safety measures under Texas Health and Safety Code §241.012.

COMMENTS

The 31-day comment period ended July 25, 2022. During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §241.026, which requires HHSC to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals, and Texas Health and Safety Code §260C.002, which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist health care facilities establish in-person religious counselor visitation policies and procedures.

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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Karen Ray
Chief Counsel
Department of State Health Services
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Proposal publication date: June 24, 2022
For further information, please call: (512) 834-4591

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 306. BEHAVIORAL HEALTH DELIVERY SYSTEM

SUBCHAPTER C. TEXAS CERTIFIED COMMUNITY BEHAVIORAL HEALTH CLINICS

26 TAC §§306.101, 306.103, 306.105, 306.107, 306.109, 306.111

The Texas Health and Human Services Commission (HHSC) adopts new §306.101, concerning Purpose; §306.103, concerning Application; §306.105, concerning Definitions; §306.107, concerning Certification Eligibility; §306.109, concerning Application Process; and §306.111, concerning Certification Standards.

Sections 306.101, 306.103, 306.105, 306.109, and 306.111 are adopted without changes to the proposed text as published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3421). These rules will not be republished. Section 306.107 is adopted with changes to the proposed text published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3421). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The new sections are necessary to codify existing certification, recertification, and certification maintenance requirements for Texas Certified Community Behavioral Health Clinics. Certified Community Behavioral Health Clinics are a national service delivery model that integrates behavioral health care and primary care to improve overall health outcomes.

COMMENTS

The 31-day comment period ended July 11, 2022.

During this period, HHSC did not receive any comments regarding the proposed rules.

HHSC made a minor grammatical change and an editorial change to correct a reference in §306.107.

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Health and Safety Code §531.001(e), which requires HHSC to assist the local agencies and organizations providing mental health services by coordinating the implementation of a statewide system of mental health services, and Texas Government Code §531.002(b)(2), which provides HHSC is the state agency with primary responsibility for ensuring the delivery of state health and human services in a manner that maximizes the use of federal, state, and local funds.

§306.101. Purpose.

The purpose of this subchapter is to describe the requirements for an applicant to be certified by the Texas Health and Human Services Commission as a Texas Certified Community Behavioral Health Clinic.

§306.103. Application.

The provisions of this subchapter apply to applicants defined in §306.105 of this subchapter (relating to Definitions).

§306.105. Definitions.

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

(1) Applicant--An entity applying or reapplying for certification as a Texas Certified Community Behavioral Health Clinic (T-CCBHC).

(2) Application--A Texas Health and Human Services Commission form submitted by an applicant for T-CCBHC certification and recertification.

(3) Community needs assessment--A systematic approach to identifying community needs and determining program capacity to address the needs of the population being served. The needs assessment is objective and includes input from people receiving services, program staff, and other key community stakeholders.

(4) Crisis stabilization--Services to address a mental health or substance use crisis, including suicide crisis response and services capable of addressing crises related to substance use.

(5) Family-centered--Developmentally appropriate and youth guided care that recognizes active participation between families and caregivers and professionals as a cornerstone to the planning, delivery, and evaluation of services.

(6) Governmental entity--A state agency or a political subdivision of the state, such as a city, county, hospital district, hospital authority, or state entity.

(7) HHSC--The Texas Health and Human Services Commission or its designee.

(8) LBHA--Local behavioral health authority. An entity designated as the local behavioral health authority by HHSC in accordance with Health and Safety Code, §533.0356(a).

(9) LMHA--Local mental health authority. An entity designated as the local mental health authority by HHSC in accordance with Health and Safety Code, §533.035(a).

(10) Person--An individual receiving services under this subchapter.

(11) Person-centered--Care that is strengths-based, trauma informed, and focuses on individual capacities, preferences, and goals that gives the person the opportunity to optimize their self-defined quality of life, choice, control, and self-determination through meaningful exploration and discovery of unique preferences, needs, and wants while ensuring medical and non-medical needs are met via means that are exclusively for the benefit of the person and supports them to reach their full potential.

(12) T-CCBHC--Texas Certified Community Behavioral Health Clinic. An entity certified in accordance with this subchapter.

§306.107. Certification Eligibility.

An applicant must meet the criteria in this section for certification.

(1) Staffing requirements.

(A) Staffing plans must reflect findings of the community needs assessment.

(B) Staff members must have, and be currently active with, all necessary state-required licenses and accreditations to deliver required services.

(C) Staff members must be trained to serve the needs of the clinic's patient population as identified through the community needs assessment and in compliance with Section 223(a)(2)(A) of the Protecting Access to Medicare Act of 2014.

(D) Staff must be trained in a person-centered and family-centered approach.

(2) Availability and accessibility of services. The applicant cannot deny or limit services based on a person's inability to pay.

(3) Care coordination.

(A) The applicant must coordinate care across settings and providers to ensure seamless transitions for the person across the full spectrum of health services including acute, chronic, and behavioral health.

(B) The T-CCBHC must have a health information technology system that includes an electronic health record and must have a plan in place focusing on ways to improve care coordination using health information technology.

(4) Scope of services.

(A) The applicant must provide or, with HHSC approval, arrange for the provision of the following services:

(i) crisis mental health services, including 24-hour mobile crisis services, crisis intervention services, and safety monitoring;

(ii) screening, assessment, and diagnosis, including risk assessment;

(iii) person-centered treatment planning or similar processes, including risk assessment and crisis planning;

(iv) outpatient mental health and substance use services;

(v) outpatient clinic primary care screening and monitoring of key health indicators and health risk;

(vi) mental health targeted case management as defined in Texas Administrative Code, Title 1, Part 15, §353.1403 (relating to Definitions);

(vii) psychiatric rehabilitation services;

(viii) peer specialist services and family partner supports; and

(ix) intensive, community-based mental health care for members of the armed forces and veterans.

(B) Crisis mental health services must be provided regardless of a person's place of residence, homelessness, or lack of a permanent address.

(5) Quality and other reporting.

(A) A T-CCBHC must report encounter data, clinical outcomes data, quality data, and other data HHSC requests.

(B) A T-CCBHC must have health information technology systems that allow reporting on data and quality measures.

(6) Organizational authority.

(A) The applicant must be a non-profit or governmental entity; or an entity operated under the authority of the Indian Health Service, an Indian tribe or tribal organization pursuant to a contract, grant, cooperative agreement, or compact with the Indian Health Service pursuant to the Indian Self-Determination Act (25 U.S.C. 450 *et seq.*), or an urban Indian organization pursuant to a grant or contract with the Indian Health Service under title V of the Indian Health Care Improvement Act (25 U.S.C. 1601 *et seq.*).

(B) The applicant must be operational as an entity listed under subparagraph (A) of this paragraph for a minimum of two years in Texas before applying for T-CCBHC certification.

(C) The applicant's T-CCBHC must have a governing board. The governing board must:

(i) be comprised of at least 51 percent families, consumers, and people in recovery from behavioral health conditions; or

(ii) establish an advisory committee that meets the requirements of clause (i) of this subparagraph and provides meaningful input to the governing board about the T-CCBHC's polices, processes, and services.

§306.109. Application Process.

(a) An applicant must submit a completed HHSC application to be considered for certification or recertification, using application information and instructions provided on the HHSC website.

(b) HHSC prioritizes review and approval of LMHA and LBHA T-CCBHC applications as appropriate.

(c) HHSC reviews an application in accordance with the T-CCBHC eligibility requirements in §306.107 of this subchapter (relating to Certification Eligibility) and may deny an application for certification for good cause, including:

(1) the application is incomplete in any aspect;

(2) the application is not submitted in accordance with HHSC's application instructions or published notice;

(3) the application contains false information;

(4) HHSC, any other agency in Texas or in another state, or federal agency has terminated the applicant's contract, licensure, or certification for cause at any point in the three years preceding the application submission date;

(5) the applicant is excluded or debarred from contracting with the State of Texas or the federal government;

(6) the applicant has an outstanding Medicaid program audit exception or other unresolved financial liability owed to the State of Texas;

(7) the applicant is ineligible to enroll as a Medicaid provider for reasons relating to criminal history records as set forth in state rules; or

(8) the applicant terminated a provider agreement in a federal health care program, as defined in 42 U.S.C, §1302a-7b(f), while an adverse action or sanction was in effect.

(d) An applicant must submit supporting documentation and participate in HHSC conducted interviews to confirm the applicant meets each criterion in §306.107 of this subchapter.

(e) Applicants must submit appropriate documentation in response to no more than two requests from HHSC for supplemental information within a timeframe agreed upon by the applicant and HHSC not to exceed 60 calendar days from the date of HHSC's first request.

§306.111. Certification Standards.

(a) In order to maintain certification, T-CCBHCs must coordinate with other T-CCBHCs that deliver services in the same geographic service area to ensure services are not duplicated for persons receiving services from more than one T-CCBHC.

(b) T-CCBHC certification does not replace Texas regulations regarding provision of services or contract requirements. T-CCBHCs must maintain all required licenses throughout the certification period. Any regulatory license revocations, of either facility or professional licenses, that result in a T-CCBHC being unable to operate within the State of Texas will preclude the T-CCBHC from continuing as certified.

(c) T-CCBHC certification is approved for three years, subject to parameters outlined in §306.109(c) of this subchapter (relating to Application Process).

(d) T-CCBHCs may reapply for certification if eligible in accordance with §306.109 of this subchapter.

(e) To ensure prevention of a lapse in certification, T-CCBHCs must submit an application, as defined in §306.105(2) of this subchapter (relating to Definitions), to be considered for recertification. Applications must be submitted no earlier than 180 calendar days before the expiration of certification, but not later than 60 calendar days before the expiration of certification.

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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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 458-0775

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SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §506.39

The Texas Health and Human Services Commission (HHSC) adopts new §506.39, concerning In-Person Visitation During a Public Health Emergency or Disaster.

New §506.39 is adopted without changes to the proposed text as published in the June 24, 2022, issue of the *Texas Register* (47 TexReg 3657). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The new section is necessary to comply with Senate Bill (S.B.) 572, 87th Legislature, 2021, Regular Session. S.B. 572 requires HHSC to adopt rules establishing guidelines for certain health care facilities, including hospitals and special care facilities, to use when developing policies and procedures for in-person religious counselor visitation during a public health emergency, as required under Texas Health and Safety Code Chapter 260C.

COMMENTS

The 31-day comment period ended July 25, 2022. During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Health and Safety Code §248.026, which requires HHSC to adopt rules establishing minimum standards for special care facilities; and Texas Health and Safety Code §260C.002, which requires the Executive Commissioner of HHSC to by rule develop guidelines to assist health care facilities establish in-person religious counselor visitation policies and procedures.

§506.39. In-Person Visitation During a Public Health Emergency or Disaster.

(a) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) Public health emergency--A state of disaster or local disaster declared under Texas Government Code Chapter 418 or a public health disaster as defined by Texas Health and Safety Code (HSC) §81.003.

(2) Religious counselor--An individual acting substantially in a pastoral or religious capacity to provide spiritual counsel to other individuals.

(b) In accordance with HSC §260C.002 (relating to In-Person Visitation with Religious Counselor), except as provided by subsections (c) and (d) of this section, a facility may not prohibit a resident from receiving in-person visitation with a religious counselor during

a public health emergency upon the request of the resident or, if the resident is incapacitated, upon the request of the resident's legally authorized representative, including a family member of the resident.

(c) A facility may prohibit in-person visitation with a religious counselor during a public health emergency if federal law or a federal agency requires the facility to prohibit in-person visitation during that period.

(d) To the extent that facility establishes policies and procedures for in-person religious counselor visitation during a public health emergency, these policies and procedures shall comply with the following:

(1) The policies and procedures shall establish minimum health and safety requirements for in-person visitation with religious counselors consistent with:

(A) state, local and federal directives and guidance regarding the public health emergency;

(B) public health emergency and disaster preparedness plans; and

(C) other policies adopted by the facility, including the facility's general visitation policy and infection control policy.

(2) The policies and procedures shall address considerations for residents who are receiving end-of-life care.

(3) The policies and procedures may contain reasonable time, place, and manner restrictions on in-person visitation with religious counselors to mitigate the spread of a communicable disease or address a resident's medical condition.

(4) The policies and procedures may condition in-person visitation with religious counselors on the counselor's compliance with guidelines, policies, and procedures established under this subsection.

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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Karen Ray
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CHAPTER 556. NURSE AIDES

26 TAC §§556.2, 556.3, 556.5 - 556.13

The Health and Human Services Commission (HHSC) adopts amendments to §§556.2, 556.3, and 556.5 - 556.13, in Title 26, Part 1, Chapter 556, concerning Nurse Aides.

Amendments to §556.7 are adopted with changes to the proposed text as published in the April 8, 2022, issue of the *Texas Register* (47 TexReg 1830). This rule will be republished.

Amendments to §§556.2, 556.3. 556.5, 556.6, and 556.8 - 556.13 are adopted without changes to the proposed text as published in the April 8, 2022, issue of the *Texas Register* (47 TexReg 1830). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The amended rules implement Texas Health and Safety Code (HSC), Chapter 250, Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly, Persons with Disabilities, or Persons with Terminal Illnesses, created by Senate Bill (S.B.) 1103, 87th Legislature, Regular Session, 2021. HSC Chapter 250 states that nurse aides must be provided a certificate of registration to be placed on the Nurse Aide Registry.

The purpose of these amendments is to address the shortage of certified nurse aides by expanding the definition of a clinical site to allow certain health care facilities other than nursing facilities to serve as a NATCEP clinical site and to clarify that HHSC may conduct on-site or off-site visits and reviews.

COMMENTS

The 31-day comment period ended May 9, 2022. During this period, HHSC received comments regarding the proposed rules from two commenters: representatives from Texas Health Care Association and an anonymous commenter.

Comment: One commenter requested that HHSC revisit how Civil Money Penalties (CMPs) are being recommended for low level deficiencies that increase NATCEP bans and revisit how CMPs are being recommended for deficiencies where a CMP is not necessary to prompt facility compliance per statutory direction.

Response: HHSC declines to make the changes because they are outside the scope of this rule project. HHSC also has no authority to change how CMPs are recommended; that is under the purview of the Centers for Medicare and Medicaid Services (CMS) federal money penalty found in Code of Federal Regulations, Title 42, Part 488 (42 CFR Part 488).

Comment: One commenter requested an increase in visibility of the waiver program to allow broader awareness and consideration of provider applications to be submitted and considered.

Response: HHSC declines to make the suggested change at this time, as it is outside the scope of this chapter. HHSC will address waiver program visibility through policy.

Comment: One commenter requested consideration be given to when the facility has already regained substantial compliance.

Response: HHSC declines to make the suggested change at this time, as it is outside the scope of this chapter. CMS has issued guidance related to substantial compliance and changes to these criteria cannot be made by the state agency, HHSC.

Comment: One commenter requested that HHSC ensure timely notification of NATCEP bans to prevent extended impact on direct care workforce development.

Response: HHSC declines to make the suggested change at this time, as it is outside the scope of this rule project. HHSC does have a timely process to notify providers regarding NATCEP bans.

Comment: One commenter requested an amendment to allow HHSC to conduct off-site virtual visits.

Response: HHSC agrees with this comment and has made the suggested changes to §556.7(c) - (e) to clarify that HHSC may conduct on-site or off-site reviews.

Comment: One commenter requested consideration to conduct on-site and off-site visits every three years, instead of every two years.

Response: HHSC declines to make the requested change. HHSC has no authority to decrease the frequency of visits as 42 CFR §483.151(e) provides that a state may not grant approval of a NATCEP evaluation program for a period longer than two years.

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §250.0035(d), which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement §250.0035 related to the issuance and renewal of certificates of registration and the regulation of nurse aides as necessary to protect the public health and safety.

§556.2. Definitions.

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

(1) Abuse--The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.

(2) Act--The Social Security Act, codified at United States Code, Title 42, Chapter 7.

(3) Active duty--Current full-time military service in the armed forces of the United States or as a member of the Texas military forces, as defined in Texas Government Code §437.001, or similar military service of another state.

(4) Active status--The designation given to a nurse aide listed on the NAR who is eligible to work in a nursing facility.

(5) Armed forces of the United States--The Army, Navy, Air Force, Space Force, Coast Guard, or Marine Corps of the United States, including reserve units of those military branches.

(6) Classroom training--The teaching of curriculum components through in-person instruction taught in a physical classroom location, which may include skills practice, or through online instruction taught in a virtual classroom location.

(7) Clinical training--The teaching of hands-on care of residents in a nursing facility under the required level of supervision of a licensed nurse, which may include skills practice prior to performing the skills through hands-on care of a resident. The clinical training provides the opportunity for a trainee to learn to apply the classroom training to the care of residents with the assistance and required level of supervision of the instructor.

(8) Competency evaluation--A written or oral examination and a skills demonstration administered by a skills examiner to test the competency of a trainee.

(9) Competency evaluation application--An HHSC form used to request HHSC approval to take a competency evaluation.

(10) Curriculum--The publication titled *Texas Curriculum for Nurse Aides in Long Term Care Facilities* developed by HHSC.

(11) Direct supervision--Observation of a trainee performing skills in a NATCEP.

(12) Employee misconduct registry (EMR)--The registry maintained by HHSC in accordance with Texas Health and Safety Code, Chapter 253, to record findings of reportable conduct by certain unlicensed employees.

(13) Facility--Means:

(A) a nursing facility licensed under Texas Health and Safety Code, Chapter 242;

(B) a licensed intermediate care facility for an individual with an intellectual disability or related condition licensed under Texas Health and Safety Code, Chapter 252;

(C) a type B assisted living facility licensed under Texas Health and Safety Code, Chapter 247; or

(D) a general or special hospital licensed under Texas Health and Safety Code, Chapter 241.

(14) Facility-based NATCEP--A NATCEP offered by or in a nursing facility.

(15) General supervision--Guidance and ultimate responsibility for another person in the performance of certain acts.

(16) HHSC--The Texas Health and Human Services Commission or its designee.

(17) Infection control--Principles and practices that prevent or stop the spread of infections in the facility setting.

(18) Informal Review (IR)--An opportunity for a nurse aide to dispute a finding of misconduct by providing testimony and supporting documentation to an impartial HHSC staff person.

(19) Licensed health professional--A person licensed to practice healthcare in the state of Texas including:

(A) a physician;

(B) a physician assistant;

(C) a physical, speech, or occupational therapist;

(D) a physical or occupational therapy assistant;

(E) a registered nurse;

(F) a licensed vocational nurse; or

(G) a licensed social worker.

(20) Licensed nurse--A registered nurse or licensed vocational nurse.

(21) Licensed vocational nurse (LVN)--An individual licensed by the Texas Board of Nursing to practice as a licensed vocational nurse.

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

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

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

(25) Misappropriation of resident property--The deliberate misplacement, exploitation, or wrongful, temporary or permanent, use of a resident's belongings or money without the resident's consent.

(26) Neglect--The failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

(27) Non-facility-based NATCEP--A NATCEP not offered by or in a nursing facility.

(28) Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse and who has successfully completed a NATCEP or has been determined competent by waiver or reciprocity and who has been issued a certificate of registration. This term does not include an individual who is a licensed health professional or a registered dietitian or who volunteers services without monetary compensation.

(29) Nurse Aide Registry (NAR)--A listing of nurse aides, maintained by HHSC, that indicates if a nurse aide has active status, revoked status, or is unemployable based on a finding of having committed an act of abuse, neglect, or misappropriation of resident property.

(30) Nurse aide training and competency evaluation program (NATCEP)--A program approved by HHSC to train and evaluate an individual's ability to work as a nurse aide in a nursing facility.

(31) Nurse aide training and competency evaluation program (NATCEP) application--A HHSC form used to request HHSC initial approval to offer a NATCEP, to renew approval to offer a NATCEP, or to request HHSC approval of changed information in an approved NATCEP application.

(32) Nursing services--Services provided by nursing personnel that include, but are not limited to:

(A) promotion and maintenance of health;

(B) prevention of illness and disability;

(C) management of health care during acute and chronic phases of illness;

(D) guidance and counseling of individuals and families; and

(E) referral to other health care providers and community resources when appropriate.

(33) Performance record--An evaluation of a trainee's performance of major duties and skills taught by a NATCEP.

(34) Person--A corporation, organization, partnership, association, natural person, or any other legal entity that can function legally.

(35) Personal protective equipment (PPE)--Specialized clothing or equipment, worn by an employee for protection against infectious materials.

(36) Program director--An individual who is approved by HHSC and meets the requirements in §556.5(a) of this chapter (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(37) Program instructor--An individual who is approved by HHSC to conduct the training in a NATCEP and who meets the requirements in §556.5(b) of this chapter.

(38) Resident--An individual accepted for care or residing in a facility.

(39) Registered nurse (RN)--An individual licensed by the Texas Board of Nursing to practice professional nursing.

(40) Skills examiner--An individual who is approved by HHSC and meets the requirements in §556.5(d) of this chapter.

(41) Trainee--An individual who is enrolled in and attending, but has not completed, a NATCEP.

§556.3. Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements.

(a) To train nurse aides, a nursing facility must apply for and obtain approval from HHSC to offer a NATCEP or contract with another entity offering a NATCEP. The nursing facility must participate in Medicare, Medicaid, or both, to apply for approval to be a NATCEP.

(b) A person who wants to offer a NATCEP must file a complete NATCEP application with HHSC.

(c) A person applying to offer a NATCEP must submit a separate NATCEP application for each location at which training is delivered or administered.

(d) A NATCEP application must identify one or more facilities that the NATCEP uses as a clinical site. The clinical site must have all necessary equipment needed to practice and perform skills training.

(e) A NATCEP may offer clinical training hours in a laboratory setting under the following circumstances:

(1) no appropriate and qualified clinical site is located within 20 miles of the location of the NATCEP; or

(2) HHSC has determined that clinical training provided in a facility poses a risk to an individual's health or safety based on the existence of a disaster declared at the federal or state level. A NATCEP must request the ability to complete clinical training hours in a laboratory setting under the circumstances described in subsection (e)(1) of this section. HHSC will alert the public of the availability of laboratory training under the circumstances described in subsection (e)(2) of this section.

(f) HHSC does not approve a NATCEP offered by or in a nursing facility if, within the previous two years, the nursing facility:

(1) has operated under a waiver concerning the services of a registered nurse under §1819(b)(4)(C)(ii)(II) or §1919(b)(4)(C)(i) - (ii) of the Act;

(2) has been subjected to an extended or partially extended survey under §1819(g)(2)(B)(i) or §1919(g)(2)(B)(i) of the Act;

(3) has been assessed a civil money penalty of not less than $5,000 as adjusted annually under 45 Code of Federal Regulations (CFR) part 102 for deficiencies in nursing facility standards, as described in §1819(h)(2)(B)(ii) or §1919(h)(2)(A)(ii) of the Act;

(4) has been subjected to denial of payment under Title XVIII or Title XIX of the Act;

(5) has operated under state-appointed temporary management to oversee the operation of the facility under §1819(h) or §1919(h) of the Act;

(6) had its participation agreement terminated under §1819(h)(4) or §1919(h)(1)(B)(i) of the Act; or

(7) pursuant to state action, closed or had its residents transferred under §1919(h)(2) of the Act.

(g) Clinical training provided by a NATCEP in a facility other than a nursing facility must be provided under the direct supervision of the NATCEP instructor and cannot be delegated to any staff of the facility.

(h) A NATCEP using an assisted living facility as a clinical site may provide clinical training only in those services that are authorized to be provided to residents under Texas Health and Safety Code, Chapter 247

(i) A NATCEP using an intermediate care facility for an individual with an intellectual disability or related conditions as a clinical

site may provide clinical training only in those services that are authorized to be provided to individuals under Texas Health and Safety Code, Chapter 252.

(j) A nursing facility that is prohibited from offering a NATCEP under subsection (e) of this section may contract with a person to offer a NATCEP in accordance with §1819(f)(2)(C) and §1919(f)(2)(C) of the Act so long as the person has not been employed by the nursing facility or by the nursing facility's owner and:

(1) the NATCEP is offered to employees of the nursing facility that is prohibited from training nurse aides under subsection (e) of this section;

(2) the NATCEP is offered in, but not by, the prohibited nursing facility;

(3) there is no other NATCEP offered within a reasonable distance from the nursing facility; and

(4) an adequate environment exists for operating a NATCEP in the nursing facility.

(k) A person who wants to contract with a nursing facility in accordance with subsection (j) of this section must submit a completed application to HHSC in accordance with §556.4 of this chapter (relating to Filing and Processing an Application for a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and include the name of the prohibited nursing facility in the application. HHSC may withdraw the application within two years of approving it if HHSC determines that the nursing facility is no longer prohibited from offering a NATCEP.

(l) A nursing facility that is prohibited from offering a NATCEP under subsection (e)(3) of this section may request a Centers for Medicare and Medicaid Services waiver of the prohibition related to the civil money penalty in accordance with §1819(f)(2)(D) and §1919(f)(2)(D) of the Act and 42 CFR §483.151(c) if:

(1) the civil money penalty was not related to the quality of care furnished to residents;

(2) the NATCEP submits a request to HHSC for the waiver; and

(3) the Centers for Medicare and Medicaid Services approves the waiver.

(m) A NATCEP must provide at least 100 hours of training to a trainee. The 100 hours must include:

(1) 60 hours of classroom training; and

(2) 40 hours of clinical training with at least one program instructor for every 10 trainees.

(n) A NATCEP that provides online training must:

(1) maintain records in accordance with subsection (q) of this section and otherwise comply with this chapter;

(2) adopt, implement, and enforce a policy and procedures for establishing that a trainee who registers in an online training is the same trainee who participates in and completes the course. This policy and associated procedures must describe the procedures the NATCEP uses to:

(A) verify a trainee's identity;

(B) ensure protection of a trainee's privacy and personal information; and

(C) document the hours completed by each trainee; and

(3) verify on the NATCEP application that the online course has the security features required under paragraph (2) of this subsection.

(o) A NATCEP must teach the curriculum established by HHSC and described in 42 CFR §483.152. The NATCEP must include at least 16 introductory hours of classroom training in the following areas before a trainee has any direct contact with a resident:

(1) communication and interpersonal skills;

(2) infection control;

(3) safety and emergency procedures, including the Heimlich maneuver;

(4) promoting a resident's independence;

(5) respecting a resident's rights;

(6) basic nursing skills, including:

(A) taking and recording vital signs;

(B) measuring and recording height and weight;

(C) caring for a resident's environment;

(D) recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor; and

(E) caring for a resident when death is imminent;

(7) personal care skills, including:

(A) bathing;

(B) grooming, including mouth care;

(C) dressing;

(D) toileting;

(E) assisting with eating and hydration;

(F) proper feeding techniques;

(G) skin care; and

(H) transfers, positioning, and turning;

(8) mental health and social service needs, including:

(A) modifying the aide's behavior in response to a resident's behavior;

(B) awareness of developmental tasks associated with the aging process;

(C) how to respond to a resident's behavior;

(D) allowing a resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and

(E) using a resident's family as a source of emotional support;

(9) care of cognitively impaired residents, including:

(A) techniques for addressing the unique needs and behaviors of a resident with a dementia disorder including Alzheimer's disease;

(B) communicating with a cognitively impaired resident;

(C) understanding the behavior of a cognitively impaired resident;

(D) appropriate responses to the behavior of a cognitively impaired resident; and

(E) methods of reducing the effects of cognitive impairments;

(10) basic restorative services, including:

(A) training a resident in self-care according to the resident's abilities;

(B) use of assistive devices in transferring, ambulation, eating, and dressing;

(C) maintenance of range of motion;

(D) proper turning and positioning in bed and chair;

(E) bowel and bladder training; and

(F) care and use of prosthetic and orthotic devices; and

(11) a resident's rights, including:

(A) providing privacy and maintenance of confidentiality;

(B) promoting the resident's right to make personal choices to accommodate their needs;

(C) giving assistance in resolving grievances and disputes;

(D) providing needed assistance in getting to and participating in resident, family, group, and other activities;

(E) maintaining care and security of the resident's personal possessions;

(F) promoting the resident's right to be free from abuse, mistreatment, and neglect and the need to report any instances of such treatment to appropriate facility staff; and

(G) avoiding the need for restraints in accordance with current professional standards.

(p) A NATCEP must have a program director and a program instructor when the NATCEP applies for initial approval by HHSC in accordance with §556.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and to maintain HHSC approval. The program director and program instructor must meet the requirements of §556.5(a) and (b) of this chapter (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(q) A NATCEP must teach eight hours of infection control that includes the proper use of personal protective equipment (PPE) before a trainee has any direct contact with a resident.

(r) A NATCEP must verify that a trainee:

(1) is not listed on the NAR in revoked status;

(2) is not listed as unemployable on the EMR; and

(3) has not been convicted of a criminal offense listed in Texas Health and Safety Code (THSC) §250.006(a) or convicted of a criminal offense listed in THSC §250.006(b) within the five years immediately before participating in the NATCEP.

(s) A NATCEP must ensure that a trainee:

(1) completes the first 16 introductory hours of training (Section I of the curriculum) before having any direct contact with a resident;

(2) only performs services for which the trainee has been trained and has been found to be proficient by a program instructor;

(3) is under the direct supervision of a licensed nurse when performing skills as part of a NATCEP until the trainee has been found competent by the program instructor to perform that skill;

(4) is under the general supervision of a licensed nurse when providing services to a resident after a trainee has been found competent by the program instructor; and

(5) is clearly identified as a trainee during the clinical training portion of the NATCEP.

(t) A NATCEP must submit a NATCEP application to HHSC if the information in an approved NATCEP application changes. A NATCEP may not continue training or start new training until HHSC approves the change. HHSC conducts a review of the NATCEP information if HHSC determines the changes are substantive.

(u) A NATCEP must use an HHSC performance record to document major duties or skills taught, trainee performance of a duty or skill, satisfactory or unsatisfactory performance, and the name of the instructor supervising the performance. At the completion of the NATCEP, the trainee and the employer, if applicable, will receive a copy of the performance record.

(v) A NATCEP must maintain records for each session of classroom training, whether offered in person or online, and of clinical training, and must make these records available to HHSC or its designees at any reasonable time.

(1) The classroom and clinical training records must include:

(A) dates and times of all classroom and clinical training;

(B) the full name and social security number of each trainee;

(C) a record of the date and time of each classroom and clinical training session a trainee attends;

(D) a final course grade that indicates pass or fail for each trainee; and

(E) a physical or electronic sign-in record for each classroom and clinical training session. An electronic sign-in must include a form of identity verification for the trainee conducted in compliance with the requirements of subsection (i)(2) of this section.

(2) A NATCEP must provide to HHSC, on the NATCEP application, the physical address where all records are maintained and must notify HHSC of any change in the address provided.

(w) A facility must not charge a nurse aide for any portion of the NATCEP, including any fees for textbooks or other required course materials, if the nurse aide is employed by or has received an offer of employment from a facility on the date the nurse aide begins a NATCEP.

(x) HHSC reimburses a nurse aide for a portion of the costs incurred by the nurse aide to complete a NATCEP if the nurse aide is employed by or has received an offer of employment from a facility within 12 months after completing the NATCEP.

(y) HHSC must approve a NATCEP before the NATCEP solicits or enrolls trainees.

(z) HHSC approval of a NATCEP only applies to the required curriculum and hours. HHSC does not approve additional content or hours.

(aa) A new employee or trainee orientation given by a facility to a nurse aide employed by the facility does not constitute a part of a NATCEP.

(bb) A NATCEP that provides training to renew a nurse aide's listing on the NAR must include training in geriatrics and the care of residents with a dementia disorder, including Alzheimer's disease.

§556.5. Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements

(a) Program director. A program director must directly perform training or have general supervision of the program instructor and supplemental trainers. A NATCEP must have a program director when the NATCEP applies for initial approval by HHSC in accordance with §556.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and to maintain HHSC approval.

(1) The program director must:

(A) be an RN in the state of Texas;

(B) have a minimum of two years of nursing experience, with at least one year of providing long term care services in a nursing facility; and

(C) have completed a course that focused on teaching adult students or have experience in teaching adult students or supervising nurse aides.

(2) In a facility-based NATCEP, the director of nursing (DON) for the nursing facility may be approved as the program director but must not conduct the training.

(3) A program director may supervise more than one NATCEP.

(4) A program director's responsibilities include, but are not limited to:

(A) directing the NATCEP in compliance with the Act and this chapter;

(B) directly performing training or having general supervision of the program instructor and supplemental trainers;

(C) ensuring that NATCEP records are maintained;

(D) determining if trainees have passed the training portion of the NATCEP;

(E) signing a competency evaluation application completed by a trainee who has passed the training portion of the NATCEP; and

(F) signing a certificate of completion or a letter on letterhead stationery of the NATCEP or the nursing facility, stating that the trainee passed the training portion of the NATCEP if the trainee does not take the competency evaluation with the same NATCEP. The certificate or letter must include the date training was completed, the total training hours completed, and the official NATCEP name and number on file with HHSC.

(5) A NATCEP must submit a NATCEP application for HHSC approval if the program director of the NATCEP changes.

(b) Program instructor. A NATCEP must have at least one qualified program instructor when the NATCEP applies for initial approval by HHSC in accordance with §556.7 of this chapter and when training occurs.

(1) A program instructor must:

(A) be a licensed nurse;

(B) have a minimum of one year of nursing experience in a nursing facility;

(C) have completed a course that focused on teaching adult students or have experience teaching adult students or supervising nurse aides; and

(D) work under the general supervision of the program director or be the program director.

(2) The program instructor is responsible for conducting the classroom and clinical training of the NATCEP under the general supervision of the program director.

(3) An applicant for a NATCEP must certify on the NATCEP application that all program instructors meet the requirements in paragraph (1)(A) - (D) of this subsection.

(4) A NATCEP must submit a NATCEP application for HHSC approval if a program instructor of the NATCEP changes.

(c) Supplemental trainers. Supplemental trainers may supplement the training provided by the program instructor in a NATCEP.

(1) A supplemental trainer must be a licensed health professional acting within the scope of the professional's practice and have at least one year of experience in the field of instruction.

(2) The program director must select and supervise each supplemental trainer.

(3) A supplemental trainer must not act in the capacity of the program instructor without HHSC approval. To request approval, a NATCEP must submit a NATCEP application to HHSC.

(d) Skills examiner. A skills examiner must administer a competency evaluation.

(1) HHSC or its designee approves an individual as a skills examiner if the individual:

(A) is an RN;

(B) has a minimum of one year of professional experience in providing care for the elderly or chronically ill of any age; and

(C) has completed a skills training seminar conducted by HHSC or its designee.

(2) A skills examiner must:

(A) adhere to HHSC standards for each skill examined;

(B) conduct a competency evaluation in an objective manner according to the criteria established by HHSC;

(C) validate competency evaluation results on forms prescribed by HHSC;

(D) submit prescribed forms and reports to HHSC or its designee; and

(E) not administer a competency evaluation to an individual who participates in a NATCEP for which the skills examiner was the program director, the program instructor, or a supplemental trainer.

§556.6. Competency Evaluation Requirements.

(a) Only HHSC, or an entity HHSC approves, may provide a competency evaluation, which must be administered by a skills examiner at an approved evaluation site.

(b) A trainee is eligible to take a competency evaluation if the trainee has successfully completed the training portion of a NATCEP, as determined by the program director, or is eligible under §556.11 of

this chapter (relating to Waiver, Reciprocity, and Exemption Requirements).

(c) If a trainee cannot take a competency evaluation at the NATCEP location where the trainee received training, the trainee may take a competency evaluation at another location approved to offer the evaluation.

(d) An eligible trainee must obtain from the program director a signed competency evaluation application and a certificate or letter of completion of training. The trainee must arrange to take the competency evaluation at an approved location and must follow the instructions on the competency evaluation application.

(e) A NATCEP must:

(1) promptly, after one of its trainees successfully completes the NATCEP training, approve the trainee to take a competency evaluation;

(2) provide the trainee with information regarding scheduling a competency evaluation; and

(3) ensure that the trainee accurately completes the competency evaluation applications.

(f) A trainee must:

(1) take a competency evaluation within 24 months after completing the training portion of a NATCEP;

(2) verify the arrangements for a competency evaluation;

(3) complete a competency evaluation application and submit the application in accordance with application instructions;

(4) request another competency evaluation if the trainee fails a competency evaluation; and

(5) meet any other procedural requirements specified by HHSC or its designated skills examiner.

(g) A competency evaluation must consist of:

(1) a skills demonstration that requires the trainee to demonstrate five randomly selected skills drawn from a pool of skills that are generally performed by nurse aides, including all personal care skills listed in the curriculum; and

(2) a written or oral examination, which includes 60 scored multiple-choice questions selected from a pool of test items that address each course requirement in the curriculum. Written examination questions may be printed in a test booklet with a separate answer sheet or provided in an online testing format as approved by HHSC. An oral examination must be a recorded presentation read from a prepared text in a neutral manner that includes questions to test reading comprehension.

(h) A trainee with a disability, including a trainee with dyslexia as defined in Texas Education Code §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the competency evaluation under the Americans with Disabilities Act.

(i) To successfully complete the competency evaluation, a trainee must achieve a score HHSC designates as a passing score on:

(1) the skills demonstration; and

(2) the written or oral examination.

(j) A trainee who fails the skills demonstration or the written or oral examination may retake the competency evaluation twice.

(1) A trainee must be advised of the areas of the competency evaluation that the trainee did not pass.

(2) If a trainee fails a competency evaluation three times, the trainee must complete the training portion of a NATCEP before taking a competency evaluation again.

(k) HHSC informs a trainee before the trainee takes a competency evaluation that HHSC issues a certificate of registration and records successful completion of the competency evaluation on the NAR.

(l) HHSC, or its designee, issues the certificate of registration and records successful completion of the competency evaluation on the NAR within 30 days after the date the trainee passes the competency evaluation.

(m) A nursing facility must not offer or serve as a competency evaluation site if the nursing facility is prohibited from offering a NATCEP under the provisions of §556.3(f) of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements).

(n) A trainee may not be charged for any portion of a competency evaluation if the trainee is employed by or has received an offer of employment from a nursing facility on the date the trainee takes the competency evaluation.

(o) HHSC reimburses a nurse aide for a portion of the costs incurred by the individual to take a competency evaluation if the individual is employed as a nurse aide by, or has received an offer of employment from, a nursing facility within 12 months after taking the competency evaluation.

§556.7. Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP).

(a) A NATCEP must apply to have its approval renewed every two years. HHSC sends a notice of renewal to a NATCEP at least 60 days before the expiration date of an approval.

(b) A NATCEP must submit a NATCEP application at least 30 days before the expiration date of an approval. If a NATCEP does not file an application to renew an approval at least 30 days before the expiration of the approval, the approval expires.

(c) HHSC uses the results of an on-site or off-site visit to determine NATCEP compliance with the Act and this chapter and to decide whether to renew the approval of a NATCEP.

(d) HHSC may conduct an on-site or off-site review of a NATCEP at any reasonable time.

(e) HHSC provides written notification to a NATCEP of deficiencies found during an on-site or off-site review.

(1) If a NATCEP receives a notification of deficiencies from HHSC, the NATCEP must submit a written response to HHSC, which must include a plan of correction (POC) to correct all deficiencies.

(2) HHSC may direct a NATCEP to comply with the requirements of the Act and this chapter.

(3) HHSC may not renew the approval of a NATCEP that does not meet the requirements of the Act and this chapter by failing to provide an adequate POC.

(f) A NATCEP approved by HHSC may provide in-service education to a nurse aide that is necessary to have the certificate of registration and associated listing on the NAR renewed.

(g) A NATCEP must receive approval or an exemption under Texas Education Code Chapter 132 (relating to Career Schools and Colleges).

§556.8. Withdrawal of Approval of a Nurse Aide Training and Competency Evaluation Program (NATCEP).

(a) HHSC immediately withdraws approval of a nursing facility-based NATCEP if the nursing facility where the NATCEP is offered has:

(1) been granted a waiver concerning the services of an RN under §1819(b)(4)(C)(ii)(II) or §1919(b)(4)(C)(i)-(ii) of the Act;

(2) been subject to an extended (or partially extended) survey under §1819(g)(2)(B)(i) or §1919(g)(2)(B)(i) of the Act;

(3) been assessed a civil money penalty of not less than $5,000 as described in §1819(h)(2)(B)(ii) or §1919(h)(2)(A)(ii) of the Act;

(4) been subject to denial of payment under Title XVIII or Title XIX of the Act;

(5) operated under state-appointed or federally appointed temporary management to oversee the operation of the facility under §1819(h) or §1919(h) of the Act;

(6) had its participation agreement terminated under §1819(h)(4) or §1919(h)(1)(B)(i) of the Social Security Act;

(7) pursuant to state action, closed or had its residents transferred under §1919(h)(2); or

(8) refused to permit unannounced visits by HHSC.

(b) HHSC withdraws approval of a NATCEP if the NATCEP does not comply with §556.3 of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements).

(c) If HHSC withdraws approval of a NATCEP for failure to comply with §556.3 of this chapter, HHSC does not approve the NATCEP for at least two years after the date the approval was withdrawn.

(d) If HHSC proposes to withdraw approval of a NATCEP based on subsection (a) of this section, HHSC notifies the NATCEP by certified mail of the facts or conduct alleged to warrant the withdrawal. HHSC mails the notice to the facility's last known address as shown in HHSC records.

(e) A dually certified nursing facility that offers a NATCEP may request a hearing to challenge the findings of noncompliance that led to the withdrawal of approval of the NATCEP, but not the withdrawal of approval of the NATCEP itself, in accordance with 42 Code of Federal Regulations (CFR), Part 498.

(f) A nursing facility that offers a NATCEP and that participates only in Medicaid may request a hearing to challenge the findings of noncompliance that led to the withdrawal of approval of the NATCEP, but not the withdrawal of approval of the NATCEP itself. A hearing is governed by 1 Texas Administrative Code (TAC) Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), and 40 TAC Chapter 91 (relating to Hearings Under the Administrative Procedure Act), except the nursing facility must request the hearing within 60 days after receipt of the notice described in subsection (d) of this section, as allowed by 42 CFR §431.153.

(g) A nursing facility may request a hearing under subsection (e) or (f) of this section, but not both.

(h) If the finding of noncompliance that led to the denial of approval of the NATCEP by HHSC is overturned, HHSC rescinds the denial of approval of the NATCEP.

(i) If HHSC proposes to withdraw approval of a NATCEP based on §556.3 of this chapter or §556.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)), the NATCEP may request a hearing to challenge the withdrawal. A hearing is governed by 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedures Act), and 40 TAC Chapter 91 (relating to Hearings Under the Administrative Procedures Act). 1 TAC §357.484 (relating to Request for a Hearing) requires a hearing to be requested in writing within 15 days after the date the notice is received by the applicant. If a NATCEP does not make a timely request for a hearing, the applicant has waived the opportunity for a hearing and HHSC may withdraw the approval.

(j) A trainee who started a NATCEP before HHSC sent notice that it was withdrawing approval of the NATCEP may complete the NATCEP.

§556.9. Certificate of Registration, Nurse Aide Registry, and Renewal.

(a) HHSC is the agency responsible for issuing individuals a certificate of registration and listing them on the NAR.

(b) To be issued a certificate of registration and be listed on the NAR as having active status, a nurse aide must successfully complete a NATCEP, as described in §556.6(i) of this chapter (relating to Competency Evaluation Requirements).

(c) HHSC does not charge a fee to issue the certificate of registration or list a nurse aide on the NAR or to renew the certificate of registration and the nurse aide's listing of active status on the NAR.

(d) A nurse aide listed on the NAR must inform HHSC of the nurse aide's current address and telephone number.

(e) The certificate of registration and the listing of active status on the NAR expires 24 months after the certificate of registration was issued and the nurse aide was listed on the NAR or 24 months after the last date of verified employment as a nurse aide, whichever is earlier. To renew the certificate of registration and active status on the NAR, the following requirements must be met:

(1) A nursing facility must submit a HHSC Employment Verification form to HHSC that documents that the nurse aide has performed paid nursing or nursing-related services at the nursing facility during the preceding year.

(2) A nurse aide must submit a HHSC Employment Verification form to HHSC to document that the nurse aide has performed paid nursing or nursing-related services, if documentation is not submitted in accordance with paragraph (1) of this subsection by the nursing facility or facilities where the nurse aide was employed.

(3) A nurse aide must complete an HHSC course in infection control and proper use of PPE every year.

(4) A nurse aide must complete at least 24 hours of in-service education every two years. The in-service education must include training in geriatrics and the care of residents with a dementia disorder, including Alzheimer's disease. The in-service education must be provided by:

(A) a nursing facility;

(B) an approved NATCEP;

(C) HHSC; or

(D) a healthcare entity, other than a nursing facility, licensed or certified by HHSC, the Texas Department of State Health Services, or the Texas Board of Nursing.

(5) No more than 12 hours of the in-service education required by paragraph (4) of this subsection may be provided by an entity described in paragraph (4)(D) of this subsection.

§556.10. Expiration of the Certificate of Registration and Active Status.

(a) A nurse aide's certificate of registration and status on the NAR is changed to expired if:

(1) the nurse aide has not performed nursing-related services or acted as a nurse aide for monetary compensation for 24 consecutive months; or

(2) effective September 1, 2013, the nurse aide has not completed 24 hours of in-service education during the preceding two years.

(b) A nurse aide whose certificate of registration has expired and is listed as expired on the NAR must complete a NATCEP or a competency evaluation to reactivate the certificate of registration and be listed on the NAR with active status.

§556.11. Waiver, Reciprocity, and Exemption Requirements.

(a) HHSC may waive the requirement for a nurse aide to take the NATCEP specified in §556.3 of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements) and issue a certificate of registration and place a nurse aide on the NAR on active status if the nurse aide:

(1) submits proof of completing a nurse aide training course of at least 100 hours duration before July 1, 1989;

(2) submits a HHSC Employment Verification form to HHSC to document that the nurse aide performed nursing or nursing-related services for monetary compensation at least once every two years since July 1, 1989;

(3) is not listed as unemployable on the EMR;

(4) has not been convicted of a criminal offense listed in Texas Health and Safety Code (THSC), §250.006(a), or convicted of a criminal offense listed in THSC, §250.006(b) within the preceding five years; and

(5) completes the HHSC Waiver of Nurse Aide Training and Competency Evaluation Program form.

(b) HHSC issues the certificate of registration and places a nurse aide on the NAR by reciprocity if:

(1) the nurse aide is listed as having active status on another state's registry of nurse aides;

(2) the other state's registry of nurse aides is in compliance with the Act;

(3) the nurse aide is not listed as unemployable on the EMR;

(4) the nurse aide has not been convicted of a criminal offense listed in THSC, §250.006(a), or convicted of a criminal offense listed in THSC, §250.006(b) within the preceding five years; and

(5) the nurse aide completes a HHSC Reciprocity form and submits it to HHSC.

(c) A person is eligible to take a competency evaluation with an exemption from the nurse aide training specified in §556.3 of this chapter if the individual:

(1) meets one of the following requirements for eligibility:

(A) is seeking renewal under §556.9 of this chapter (relating to Certificate of Registration, Nurse Aide Registry, and Renewal);

(B) has successfully completed at least 100 hours of training at a NATCEP in another state within the preceding 24 months but has not taken the competency evaluation or been placed on an NAR in another state;

(C) has successfully completed at least 100 hours of military training, equivalent to civilian nurse aide training, on or after July 1, 1989;

(D) has successfully completed an RN or LVN program at an accredited school of nursing in the United States within the preceding 24 months; and:

(i) is not licensed as an RN or LVN in the state of Texas; and

(ii) has not held a license as an RN or LVN in another state that has been revoked; or

(E) is enrolled or has been enrolled within the preceding 24 months in an accredited school of nursing in the United States and demonstrates competency in providing basic nursing skills in accordance with the school's curriculum;

(2) is not listed as unemployable on the EMR;

(3) has not been convicted of a criminal offense listed in THSC, §250.006(a), or convicted of a criminal offense listed in THSC, §250.006(b) within the preceding five years;

(4) submits documentation to verify at least one of the requirements in paragraph (1) of this subsection;

(5) arranges for a nursing facility or NATCEP to serve as a competency evaluation site; and

(6) before taking the competency evaluation, presents to the skills examiner an original letter from HHSC authorizing the person to take the competency evaluation.

§556.12. Findings and Inquiries.

(a) HHSC reviews and investigates allegations of abuse, neglect, or misappropriation of resident property by a nurse aide employed in a nursing facility. If HHSC finds that a nurse aide committed an act of abuse, neglect, or misappropriation of resident property, before entry of the finding on the NAR, HHSC provides the nurse aide an opportunity to dispute the finding through an informal review (IR) and a hearing as described in this section.

(b) If HHSC finds that a nurse aide committed an act of abuse, neglect, or misappropriation of resident property, HHSC sends the nurse aide a written notice regarding the finding. The notice includes:

(1) a summary of the findings and facts on which the findings are based;

(2) a statement informing the nurse aide of the right to an IR to dispute HHSC findings;

(3) a statement informing the nurse aide that a request for an IR must be made within 10 days after the date the nurse aide receives the written notice; and

(4) the address and contact information for the local HHSC regional office, where the nurse aide must submit a request for an IR.

(c) If a nurse aide requests an IR, HHSC sets a date to allow the nurse aide to dispute the findings of the investigation of abuse, neglect,

or misappropriation of resident property. The nurse aide may dispute the findings by providing testimony, in person or by telephone, to an impartial HHSC staff person at the local HHSC regional office.

(1) If the staff person does not uphold the findings, HHSC notifies the nurse aide of the results of the IR and closes the investigation. HHSC does not record information related to the investigation in the NAR.

(2) If the staff person upholds the findings, HHSC notifies the nurse aide of the results of the IR. The nurse aide may request a hearing in accordance with subsection (d) of this section.

(3) If the nurse aide does not request an IR, or fails to appear for a requested IR, HHSC upholds the findings. The nurse aide may request a hearing in accordance with subsection (d) of this section.

(d) A nurse aide may request a hearing after receipt of HHSC notice of the results of an IR described in subsection (c)(2) of this section. 1 Texas Administrative Code (TAC) Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), and 40 TAC Chapter 91 (relating to Hearings Under the Administrative Procedure Act) govern the hearing, except that a nurse aide must request a formal hearing within 30 days after receipt of HHSC notice in compliance with 42 Code of Federal Regulations (CFR) §488.335. If the nurse aide fails to request a hearing, the nurse aide waives the opportunity for a hearing and HHSC enters the finding of abuse, neglect, or misappropriation of resident property, as appropriate, on the NAR.

(e) If HHSC receives an allegation that a nurse aide, who has a medication aide permit under Chapter 557 of this title (relating to Medication Aides--Program Requirements), committed an act of abuse, neglect, or misappropriation of resident property, HHSC investigates the allegation under this section regarding the nurse aide practice and under Chapter 557 of this title to determine if the allegation violates the medication aide practice. The investigations run concurrently. If after the investigations, the nurse aide requests hearings on the findings under the nurse aide practice and the medication aide practice, only one hearing, conducted in accordance with subsection (d) of this section, is available to the nurse aide.

(f) If HHSC finds that a nurse aide committed an act of abuse, neglect, or misappropriation of resident property, HHSC reports the finding to:

(1) the NAR;

(2) the nurse aide;

(3) the administrator of the nursing facility in which the act occurred; and

(4) the administrator of the nursing facility that employs the nurse aide, if different from the nursing facility in which the act occurred.

(g) The NAR must include the findings involving a nurse aide listed on the NAR as well as any brief statement of the nurse aide disputing the findings.

(h) The information on the NAR is available to the public.

(i) If an inquiry is made about a nurse aide's status on the NAR, HHSC must:

(1) verify if the nurse aide is listed on the NAR;

(2) disclose information concerning a finding of abuse, neglect, or misappropriation of resident property involving the nurse aide; and

(3) disclose any statement by the nurse aide related to the finding.

(j) If a nurse aide works in a capacity other than a nurse aide in a nursing facility and is listed as unemployable in the EMR, HHSC revokes or suspends the certificate of registration and changes the status of the nurse aide's listing on the NAR to revoked or suspended. The due process available to the nurse aide before placement on the EMR satisfies the due process required before HHSC revokes or suspends the certificate of registration and changes the nurse aide's status on the NAR.

(k) If HHSC revokes or suspends the certificate of registration and lists a nurse aide's status on the NAR as suspended or revoked because of a single finding of neglect, the nurse aide may request that HHSC reissue the certificate of registration and remove the finding after the finding has been listed on the NAR for one year. To request removal of the finding, the nurse aide must submit a HHSC Petition for Removal of Neglect Finding to HHSC in accordance with the petition's instructions.

§556.13. Alternate Licensing Requirements for Military Service Personnel.

(a) Additional time for in-service education.

(1) HHSC gives a nurse aide an additional two years to complete in-service education required for a nurse aide to maintain their certificate of registration and an active listing on the NAR, as described in §556.9(e)(3) of this chapter (relating to Certificate of Registration, Nurse Aide Registry, and Renewal), if HHSC receives and approves a request for additional time to complete in-service training from a nurse aide in accordance with this subsection.

(2) To request additional time to complete in-service education, a nurse aide must submit a written request for additional time to HHSC before the expiration date of the nurse aide's certification. The nurse aide must include with the request documentation of the nurse aide's status as a military service member that is acceptable to HHSC. Documentation as a military service member that is acceptable to HHSC includes a copy of a military service order issued by the United States Armed Forces, the State of Texas, or another state.

(3) If HHSC requests additional documentation, the nurse aide must submit the requested documentation.

(4) HHSC approves a request for two additional years to complete in-service education submitted in accordance with this subsection if HHSC determines that the nurse aide is a military service member, except HHSC does not approve a request if HHSC granted the nurse aide a previous extension and the nurse aide did not complete the in-service education requirements during the previous extension period.

(b) Renewal of expired certificate of registration and NAR listing.

(1) HHSC renews the certificate of registration and changes the status of a listing from expired to active if HHSC receives and approves a request for renewal and an active status listing from a former nurse aide in accordance with this subsection.

(2) To request renewal and an active status listing, a former nurse aide must submit a written request with the documents required for renewal in accordance with §556.9(e) of this chapter within five years after the former nurse aide's certificate of registration and listing expired. The former nurse aide must include with the request documentation of the former nurse aide's status as a military service member, military veteran, or military spouse that is acceptable to HHSC.

(3) Documentation of military status that is acceptable to HHSC includes:

(A) for status as a military service member, a copy of a current military service order issued to the former nurse aide by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the former nurse aide by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the former nurse aide by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the former nurse aide's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If HHSC requests additional documentation, the former nurse aide must submit the requested documentation.

(5) HHSC approves a request for an active status listing submitted in accordance with this subsection if HHSC determines that:

(A) the former nurse aide meets the requirements for renewal described in §556.9(e) of this chapter;

(B) the former nurse aide is a military service member, military veteran, or military spouse;

(C) the former nurse aide has not committed an offense listed in Texas Health and Safety Code (THSC) §250.006(a) and has not committed an offense listed in THSC §250.006(b) during the five years before the date the former nurse aide submitted the initial license application; and

(D) the former nurse aide is not listed on the EMR.

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 September 7, 2022.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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Proposal publication date: April 8, 2022
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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 299. DAMS AND RESERVOIRS

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §§299.1, 299.2, 299.7

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 30 TAC §307.6 and 30 TAC §307.10 are not included in the print version of the Texas Register. The figures are available in the on-line version of the September 23, 2022, issue of the Texas Register.)

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§299.1, 299.2, and 299.7.

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§299.1, 299.2, and 299.7, *without changes* to the proposed text as published in the April 15, 2022, issue of the *Texas Register* (47 TexReg 1970) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The purpose of this rulemaking adoption is to amend existing rules to add the language of Senate Bill (SB) 600, 87th Texas Legislature (2021), Author: Perry, requiring river authorities to submit information on their dams. There are eight river authorities that meet the requirements of SB 600, and there are 79 dams owned by these river authorities.

Language requiring dam exemptions from House Bill (HB) 2694, 82nd Texas Legislature (2011), Author: Smith, and HB 677, 83rd Texas Legislature (2013), Author: Geren, has been added. The recent audit report findings on the Dam Safety Program by Texas State Auditor's Office, issued July 2020, recommended that the language of these two bills be included in the rules.

Revisions were made to clarify language in the rules.

Section by Section Discussion

Subchapter A: General Provisions

The commission adopts amended §299.1 (Applicability) by clarifying language to better define a dam. There has been confusion on what constitutes a dam.

The commission adopts the figure located in §299.1(a)(2) to clarify the applicability of the rules to a dam.

The commission adopts §299.1(c)(6) to include language from HB 677 for exemption of dams if the dam meets all five of the criteria listed in the adopted rule: (1) is located on private property; (2) at maximum capacity impounds less than 500 acre-feet; (3) has a hazard classification of low or significant; (4) is located in a county with a population of less than 350,000; and (5) is not located inside the corporate limits of a municipality.

The commission adopts revised language for the definitions of main highways (§299.2(33)), minor highways (§299.2(38)), and secondary highways (§299.2(59)) to better define each for use in hazard classifications.

The commission adopts the revised definition of "removal" in §299.2(54) to clarify and be consistent with the definition in the *Dam Removal Guidelines for Dams in Texas.*

The commission adopts the revised language for the Inventory of Dams in §299.7 to better define what is in the inventory and to remove language for items that are not included.

The commission adopts §299.7(b)(1) and (2), after reformatting, and the addition of "a" to §299.7, to include language from SB 600 that each river authority, designated in Section 325.025(b), Government Code, shall provide to the executive director information regarding the operation and maintenance of dams under

the control of that river authority. The following information is to be provided for each dam: 1) location of the dam; 2) under whose jurisdiction the dam operates; 3) required maintenance schedule for the dam; 4) costs of the operation and maintenance of the dam; and 5) method of finance for operations and maintenance costs of the dam.

The commission adopts §299.7(b)(3) to require the river authorities to submit the information annually.

The commission adopts §299.7(b)(4) to require the TCEQ to create and maintain an internet website to contain the information, subject to federal and state confidentiality laws.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225, applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3), as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The purpose of this rulemaking is to amend existing rules to add the language of Senate Bill (SB) 600, Perry, 87th Texas Legislature (2021), requiring river authorities to submit information on their dams. There are eight river authorities that meet the requirements of SB 600, and there are 79 dams owned by these river authorities.

Second, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the adopted rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the adopted amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the adopted rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: "1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This adopted rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the regulation of dams ; 2) does not exceed any express requirements of state law related to the regulation of dams; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency. Since this adopted rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule," this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated this rulemaking and performed an analysis of whether the adopted rules will constitute a taking. Texas Government Code, §2007.002(5), defines a taking as either: 1) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Sections 17 or 19, Article I, Texas Constitution; or 2) a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The commission determined that these adopted rules will not constitute a taking as that term is defined under Texas Government Code, §2007.002(5). Specifically, the adopted rules will not affect any landowner's rights in private real property, and there are no burdens that will be imposed on private real property by the adopted rules; the adopted rules are solely procedural and do not impact real property.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission offered a public hearing on May 17, 2022. The comment period closed on May 17, 2022. The commission received no comments.

Statutory Authority

These amendments are adopted under the authority granted to the commission in Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; §5.013, which establishes the commission's authority over various statutory programs, such as dam safety; §5.103

and §5.105, which establish the commission's general authority to adopt rules; §12.052, which establishes the commission's authority to promulgate rules for the safe construction, maintenance, repair, and removal of dams located in this state; and §12.053 which establishes rules regarding the inventory of dams operated by river authorities.

These adopted amendments implement Senate Bill 600, 87th Texas Legislature (2021), Author: Perry; House Bill (HB) 2694, 82nd Texas Legislature (2011), Author: Smith; and HB 677, 83rd Texas Legislature (2013), Author: Geren.

§299.1. Applicability.

(a) This chapter applies to design, review, and approval of construction plans and specifications; and construction, operation and maintenance, inspection, repair, removal, emergency management, site security, and enforcement of dams that:

(1) have a height greater than or equal to 25 feet and a maximum storage capacity greater than or equal to 15 acre-feet, as described in paragraph (2) of this subsection;

(2) have a height greater than six feet and a maximum storage capacity greater than or equal to 50 acre-feet;
Figure: 30 TAC §299.1(a)(2)

(3) are a high- or significant-hazard dam as defined in §299.14 of this title (relating to Hazard Classification Criteria), if over 6 feet high, regardless of maximum storage capacity; or

(4) are used as a pumped storage or terminal storage facility.

(b) This chapter provides the requirements for dams, but does not relieve the owner from meeting the requirements in Texas Water Code (TWC), Chapter 11, and Chapters 213, 295, and 297 of this title (relating to Edwards Aquifer; Water Rights, Procedural; and Water Rights, Substantive; respectively). All applicable requirements in those chapters will still apply.

(c) This chapter does not apply to:

(1) dams designed by, constructed under the supervision of, and owned and maintained by federal agencies such as the Corps of Engineers, International Boundary and Water Commission, and the Bureau of Reclamation;

(2) embankments constructed for roads, highways, and railroads, including low-water crossings, that may temporarily impound floodwater, unless designed to also function as a detention dam;

(3) dikes or levees designed to prevent inundation by floodwater;

(4) off-channel impoundments authorized by the commission under TWC, Chapter 26;

(5) above-ground water storage tanks (steel, concrete, or plastic); and

(6) exempt dams authorized under TWC, Chapter 12. A dam is exempt from this chapter if it meets all of the following:

(A) is located on private property;

(B) has a maximum capacity of less than 500 acre-feet, the capacity at the top of the dam as defined in 30 TAC §299.2(36);

(C) has a hazard classification of low or significant as defined in 30 TAC §299.14;

(D) is located in a county with a population of less than 350,000 based on the most current U. S. Census numbers; and

(E) is not located inside the corporate limits of a municipality, as based on the most current municipal information.

(d) All dams must meet the requirements in this chapter, including dams that do not require a water right permit, other dams that are exempt from the requirements in Subchapter C of this chapter (relating to Construction Requirements), and dams that are granted an exception as defined in §299.5 of this title (relating to Exception).

§299.2. Definitions.

The following words and terms in this section are in addition to the definitions in §3.2 of this title (relating to Definitions). The words and terms in this section, when used in this chapter, have the following meanings.

(1) Abandon--The owner no longer maintaining a dam for a period of ten years, or refusing to maintain the dam.

(2) Accepted engineering practices--The application of design and analysis methods that are commonly used by professional engineers in their field of expertise and are well documented in published design manuals, codes of practice, text books, and engineering journals.

(3) Alteration--Any change to a dam or appurtenant structures that affects the integrity, safety, and operation of the dam, including, but not limited to:

(A) changing the height of a dam;

(B) increasing the normal pool or principal spillway elevation, or changing the hydraulic capability of the principal spillway; or

(C) changing the original elevation, physical dimensions, or hydraulic capability of an emergency spillway.

(4) Appurtenant structures--The outlet works and controls, spillways and controls, gates, valves, siphons, access structures, bridges, berms, drains, hydroelectric facilities, instrumentation, and other structures related to the operation of a dam.

(5) Breach--An excavation or opening, either controlled or a result of a failure of the dam, through a dam or spillway that is capable of completely draining the reservoir down to the approximate original topography so the dam will no longer impound water, or partially draining the reservoir to lower impounding capacity.

(6) Breach analysis--The analysis of potential dam failure scenarios, including overtopping and piping (magnitude, duration, and location), using accepted engineering practices, to evaluate downstream hazard potential or to develop inundation maps.

(7) Breach inundation area--An area that would be flooded as a result of a dam failure.

(8) Closure of dam--The commencement of placing material within the closure section of the dam.

(9) Closure section--The section of the dam left open during construction of a proposed dam in order to pass floodwaters through the dam without endangering the dam.

(10) Commence construction--An actual, visible activity beyond planning or land acquisition that initiates the beginning of the construction of a dam in the manner specified in the approved construction plans and specifications for that dam. The action must be performed in good faith with the intent to continue with the construction through completion.

(11) Conceptual design--A design that presents a location and proposed plan of the dam and appurtenant structures and elevations of all pertinent features of the dam.

(12) Construction--Building a proposed dam and appurtenant structures capable of storing water.

(13) Construction change order--A document recommended by the owner's professional engineer and signed by the owner's contractor and the owner that authorizes a significant addition, deletion, or revision of the approved construction plans and specifications that has a material impact on the safety and integrity of the dam.

(14) Dam--Any barrier or barriers, with any appurtenant structures, constructed for the purpose of either permanently or temporarily impounding water.

(15) Dam failure--breach and uncontrolled release of the reservoir.

(16) Deficient dam--A dam that fails to meet the requirements of this chapter and poses a significant threat to human life or property.

(17) Deliberate impoundment--The intentional impoundment of water in the reservoir, including:

(A) closing the lowest planned outlet or spillway;

(B) blocking the diversion works that are used during construction to divert water around the construction area; and

(C) beginning the closure of the dam.

(18) Design flood--The flood used in the design and evaluation of a dam and appurtenant structures, particularly for determining the size of spillways, outlet works, and the effective crest of the dam.

(19) Detention dam--A dam that has an impoundment that is normally dry and has an ungated outlet structure that is designed to completely drain the water impounded during a flood within five days.

(20) Drawdown--The change in surface elevation of a reservoir due to a withdrawal of water from the reservoir.

(21) Effective crest of the dam--The elevation of the lowest point on the crest (top) of the dam, excluding spillways.

(22) Emergency action plan--A written document prepared by the owner or the owner's professional engineer describing a detailed plan to prevent or lessen the effects of a failure of the dam or appurtenant structures.

(23) Emergency repairs--Any repairs, considered to be temporary in nature, necessary to preserve the integrity of the dam and prevent a possible failure of the dam.

(24) Emergency spillway--An auxiliary spillway designed to pass a large, but infrequent, volume of flood flow, with a crest elevation higher than the principal spillway or normal operating level.

(25) Engineering inspection--Inspection performed by a professional engineer, or under the supervision of a professional engineer, to evaluate the condition, safety, and integrity of the dam and appurtenant structures to determine if the dam and appurtenant structures meet applicable rules and accepted engineering practices, including a field inspection and review of records for design, construction, and performance.

(26) Enlargement--Any change in, or addition to, an existing dam or reservoir that raises, or may raise, the normal storage capacity of the reservoir impounded by the dam.

(27) Existing dam--Any dam under construction or completed as of the effective date of these rules.

(28) Fetch--The straight-line distance across a reservoir subject to wind forces.

(29) Hazard classification--A measure of the potential for loss of life, property damage, or economic impact in the area downstream of the dam in the event of a failure or malfunction of the dam or appurtenant structures. The hazard classification does not represent the physical condition of the dam.

(30) Height of dam--The difference in elevation between the natural bed of the watercourse or the lowest point on the downstream toe of the dam, whichever is lower, and the effective crest of the dam.

(31) Inundation map--A map delineating the area that would be flooded by a particular flood event, or a dam failure.

(32) Loss of life--Human fatalities that would result from a failure of the dam, without considering the mitigation of loss of life that could occur with evacuation or other emergency actions.

(33) Main highways--Roads classified as an arterial system by the Texas Department of Transportation, including interstate highways, United States highways, and state highways, listed as either interstate or principal or minor arterial.

(34) Maintenance--Those tasks that are generally recurring and are necessary to keep the dam and appurtenant structures in a sound condition, free from defect or damage that could hinder the dam's functions as designed, including adjacent areas that also could affect the function and operation of the dam.

(35) Maintenance inspection--Visual inspection of the dam and appurtenant structures by the owner or owner's representative to detect apparent signs of deterioration, other deficiencies, or any other areas of concern.

(36) Maximum storage capacity--The volume, in acre-feet, of the impoundment created by the dam at the effective crest of the dam. For purposes of calculating maximum storage capacity for the Inventory of Dams as described in §299.7 of this title (relating to Inventory of Dams), only water that can be stored above natural ground level (not in excavations in the reservoir) or that could be released by a failure of the dam is considered in assessing the storage volume. The maximum storage capacity may decrease over time due to sedimentation or increase if the reservoir is dredged.

(37) Minimum freeboard--The difference in elevation between the effective crest of the dam and the maximum water surface elevation resulting from routing the design flood appropriate for the dam.

(38) Minor highways--Roads not classified as a main or secondary highway as defined in this subsection, including county roads and Farm-to-Market roads not used to provide service to schools.

(39) Modification--Any structural alteration of a dam, the spillways, the outlet works, or other appurtenant structures that could influence or affect the integrity, safety, and operation of the dam.

(40) Normal storage capacity--The volume, in acre-feet, of the impoundment created by the dam at the lowest uncontrolled spillway crest elevation, or at the maximum elevation of the reservoir at the normal (non-flooding) operating level.

(41) NAD83 conus datum--The North American Datum of 1983 is a reference system used to obtain the spherical coordinates of a point on the earth's surface. The standard North American Datum of

1983, or any future updates, must be used for all latitude and longitude measurements.

(42) NAVD88 datum--The North American Vertical Datum of 1988 is a reference system used to obtain vertical measurements on the earth's surface. The North American Vertical Datum of 1988 must be used for all vertical measurements recorded with a global positioning system receiver.

(43) Outlet--A conduit or pipe controlled by a gate or valve, or a siphon, that is used to release impounded water from the reservoir.

(44) Owner--Any person who can be one or more of the following:

(A) holds legal possession or ownership of an interest in a dam;

(B) is the fee simple owner of the surface estate of the tract of land on which the dam is located if actual ownership of the dam is uncertain, unknown, or in dispute unless the person can demonstrate by appropriate documentation, including a deed reservation, invoice, bill of sale, or by other legally acceptable means that the dam is owned by another person or persons;

(C) is a sponsoring local organization that has an agreement with the Natural Resources Conservation Service for a dam constructed under the authorization of the Flood Control Act of 1944 (as amended), Public Law 78-534, the Watershed Protection and Flood Prevention Act, 1954 (as amended), Public Law 83-566, the pilot watershed program under the Flood Prevention of the Department of Agriculture Appropriation Act of 1954, Public Law 156-67, or Subtitle H of Title XV of the Agriculture and Flood Act of 1981, the Resource Conservation and Development Program; or

(D) has a lease, easement, or right-of-way to construct, operate, or maintain a dam.

(45) Piping--The progressive removal of soil particles from a dam by percolating water, leading to development of channels or flow paths.

(46) Principal spillway--Also commonly referred to as the service spillway, the primary or initial spillway engaged during a rainfall runoff event that is designed to pass normal flows.

(47) Probable maximum flood (PMF)--The flood magnitude that may be expected from the most critical combination of meteorologic and hydrologic conditions that are reasonably possible for a given watershed.

(48) Probable maximum precipitation (PMP)--The theoretically greatest depth of precipitation for a given duration that is physically possible over a given size storm area at a particular geographical location at a certain time of the year.

(49) Professional engineer--An individual licensed by the Texas Board of Professional Engineers to engage in the practice of engineering in the state of Texas, with experience in the investigation, design, construction, repair, and maintenance of dams.

(50) Proposed dam--Any dam not yet under construction.

(51) Pumped storage dam--A rectangular or circular embankment used to store water pumped from another source.

(52) Reconstruction--Removal and replacement of an existing dam or appurtenant structures.

(53) Rehabilitation--The completion of all work necessary to extend the service life of a dam and meet the safety and performance standards of this chapter.

(54) Removal--The complete elimination of a dam, the appurtenant structures, and the reservoir to its natural channel by removing enough of the dam to the extent that no water can be either permanently impounded, nor temporarily detained, by the dam (no significant differential between the upstream and downstream water surface elevations) during normal conditions, as well as during the design flood of the dam.

(55) Repairs--Any work done on a dam that may affect the integrity, safety, and operation of the dam, including, but not limited to:

(A) excavation into the embankment fill or foundation of a dam; or

(B) removal or replacement of major structural components of a dam or appurtenant structures.

(56) Reservoir--A body of water impounded by a dam.

(57) Safe manner--Operating and maintaining a dam in sound condition, free from defect or damage that could hinder the dam's functions as designed.

(58) Seal--To affix a professional engineer's seal to each sheet of construction plans or to an engineering report or required document.

(59) Secondary highways--Roads classified as a major or minor collector road by the Texas Department of Transportation, including Farm-to-Market roads used to provide service to schools.

(60) Secure location--A building that is locked and accessible to the owner and owner's representative.

(61) Spillway--An appurtenant structure that conducts outflow from a reservoir.

(62) Sponsoring local organization--any political subdivision of the state, or other entity, with the authority to carry out, maintain, or operate work of improvement installed with the assistance of the federal government.

(63) Stability analysis--The analytical procedure for determining the most critical factor of safety for a slope.

(64) Substantially complete--A dam under construction that is complete except for minor correction of items identified in the final construction inspection and that can be operated in a safe manner to the dam's full functional capability.

§299.7. Inventory of Dams.

(a) The executive director shall maintain an inventory of dams that includes information on:

(1) ownership;

(2) physical dimensions of the dam;

(3) hazard classification;

(4) normal and maximum storage capacity;

(5) hydraulic data;

(6) inspection date;

(7) location;

(8) condition of the dam;

(9) emergency action plan status; and

(10) design dates.

(b) Inventory of dams operated by river authorities.

(1) This section applies only to a river authority described by Section 325.025(b), Government Code.

(2) Each river authority shall provide to the executive director information regarding the operation and maintenance of dams under the control of that river authority. The following information is to be provided for each dam:

(A) the location of the dam;

(B) under whose jurisdiction the dam operates;

(C) a required maintenance schedule for the dam;

(D) costs of the operation and maintenance of the dam; and

(E) the method of finance for the operation and maintenance costs of the dam.

(3) A river authority shall submit the information required by paragraph (2) of this subsection to the executive director each year and in the event of a significant change in the information.

(4) Subject to federal and state confidentiality laws, the executive director shall create and maintain an Internet website that contains the information collected under 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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CHAPTER 307. TEXAS SURFACE WATER QUALITY STANDARDS

30 TAC §§307.2 307.3, 307.6, 307.7, 307.10

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§307.2, 307.3, 307.6, 307.7, and 307.10.

Amended §§307.2, 307.3, 307.6, and 307.10 are adopted *with changes* to the proposed text as published in the March 25, 2022, issue of the *Texas Register* (47 TexReg 1588) and, therefore, will be republished. Amended §307.7 is adopted *without changes* to the proposed text and will not be republished. Amendments to §307.4 have been withdrawn in this issue of the *Texas Register.*

Background and Summary of the Factual Basis for the Adopted Rules

The Federal Water Pollution Control Act, or federal Clean Water Act (CWA), §303 (33 United States Code (USC), §1313) requires all states to adopt water quality standards for surface water. A water quality standard consists of the designated beneficial uses of a water body or a segment of a water body and the water quality criteria that are necessary to protect those uses. Water quality standards are the basis for establishing effluent limits in wastewater permits, setting instream water quality goals for total maximum daily loads (TMDLs), and providing water quality targets used to assess surface water quality monitoring data.

The states are required under the CWA to review their water quality standards at least once every three years and revise them, if appropriate. States review the standards because new scientific and technical data may be available that have a bearing on the review. Environmental changes over time may also warrant the need for a review. Where the standards do not meet established uses, they must be periodically reviewed to see if uses can be attained. Additionally, water quality standards may have been previously established for the protection and propagation of aquatic life and recreation in and on the water without sufficient data to determine whether the uses were attainable. Finally, changes in the Texas Water Code (TWC), CWA, or regulations issued by the United States Environmental Protection Agency (EPA) may necessitate reviewing and revising standards to ensure compliance with current statutes and regulations.

Following the adoption of revised Texas Surface Water Quality Standards (TSWQS) by the commission, the Governor or their designee must submit the officially adopted standards to the EPA Region 6 Administrator for review. The Regional Administrator reviews the TSWQS to determine compliance with the CWA and implementing regulations. The TSWQS are not applicable to regulatory actions under the CWA until approved by EPA.

The TSWQS were last amended in March 2018. EPA began approving portions of the state's revised standards in November 2018.

Reviews and revisions of the TSWQS address many provisions that apply statewide, such as criteria for toxic pollutants. They also address the water quality uses and criteria that are applicable to individual water bodies. An extensive review of water quality standards for individual water bodies is often initiated when the existing standards appear to be inappropriate for water bodies that are listed as impaired under the CWA, §303(d) or potentially affected by permitted wastewater discharges or other permitting actions.

States may modify existing designated uses or criteria when it can be demonstrated through a use-attainability analysis (UAA) that attaining the current designated uses or criteria is not appropriate. Most changes in designated uses or criteria are based on a demonstration that natural characteristics of a water body cannot attain the currently designated uses or criteria. Natural characteristics include temperature, pH, dissolved oxygen, diversity of aquatic organisms, amount of streamflow, physical conditions such as depth, and natural background pollutant levels. Conversely, a UAA might demonstrate that the currently designated uses and criteria are appropriate, or even that they should be more stringent.

A UAA can require several years of additional sampling studies, or it may focus on a long-term evaluation of existing historical data. For UAAs on water bodies that are potentially impacted by pollutant loadings above natural background levels, sampling and evaluation are often conducted on similar but relatively unimpacted water bodies to determine reference conditions that can be applied to the water body of concern.

The focus of UAAs depends on the uses and criteria that need to be reevaluated. The applicable aquatic life use is determined by repeatedly sampling fish or invertebrates in relatively unimpacted areas and applying quantitative indices, such as indices of biotic integrity, to the sampling data of the biological com-

munities. UAAs to assign aquatic recreational uses include assessing physical and hydrological conditions, observing existing recreation, and collecting information on current and historical recreational activities. Dissolved oxygen criteria are evaluated by monitoring dissolved oxygen over numerous (usually ten) 24-hour periods in relatively unimpacted areas. Site-specific criteria for toxic pollutants are evaluated by placing selected small aquatic organisms in water samples from the site and exposing them to different doses of the toxic pollutant of concern.

The commission is adopting editorial revisions as well as substantive changes. Editorial revisions are adopted to improve clarity, make grammatical corrections, and renumber or reletter subdivisions as appropriate.

Numerous revisions of toxic criteria are adopted to incorporate new data on toxicity effects. Another adopted change provides clarity regarding the use of temporary standards. Numerous revisions are also adopted for the uses and criteria of individual water bodies to incorporate new data and the results of recent UAAs.

Section by Section Discussion

§307.2, Description of Standards

The commission adopts amended §307.2 to include language regarding temporary standards to improve consistency with federal rules listed in 40 Code of Federal Regulations (CFR) §131.14. These revisions allow the expression of the temporary standard as an interim effluent condition when adopted for permittees or water bodies. Revisions also clarify that a temporary standard must preclude degradation of existing water quality as opposed to impairing an existing use. Other revisions are editorial and adopted to improve overall clarity.

In response to comments regarding §307.2(g), language was modified in §307.2(g)(1) to specify that the options listed therein are the only options for expressing a temporary standard, the interim effluent condition that reflects the greatest pollutant reduction achievable with pollutant control technologies can be used if no additional feasible pollutant control technology can be identified, and a temporary standard can be expressed as the highest attainable interim criterion. Additional §307.2(g) edits were adopted to improve overall clarity.

§307.3, Definitions and Abbreviations

The commission adopts amended §307.3 to include a definition and acronym for "bioaccumulation factor," and the addition of an acronym for "municipal utility district." The definition for "method detection limit" has also been amended to match the current federal definition in 40 CFR Part 136. Other revisions are editorial and adopted to improve overall clarity. The proposed definition for "pre-production plastics" has been removed from this rulemaking for further consideration and, therefore, is not part of adopted §307.3.

§307.4, General Criteria

The proposed addition of subsection (b)(8) explicitly prohibiting the discharge of visible pre-production plastic and providing a compliance mechanism has been removed from this rulemaking for further consideration; therefore, the commission does not adopt amendments to §307.4. The proposed rule has been withdrawn.

§307.6, Toxic Materials

The commission adopts amended §307.6(c)(1), Table 1, which lists numeric criteria for the protection of aquatic life, to include revisions to the existing cadmium acute and chronic criteria for both freshwater and saltwater based on EPA's issuance of an updated national criteria document.

In response to comments regarding §307.6(c)(1), Table 1, the freshwater chronic criterion for cadmium was corrected, and the analytical method for free cyanide analysis has been incorporated into footnote 2.

Adopted changes to the human health criteria in §307.6(d)(1), Table 2, include the revision of oral slope factors that led to revised criteria for the following five carcinogens: benzo(*a*)anthracene, benzo(*a*)pyrene, chrysene, 1,2-dichloropropane, and 1,3-dichloropropene. Reference dose updates also led to revisions of criteria for the following two carcinogens: dichloromethane and tetrachloroethylene. Criteria revisions to one carcinogen, dicofol, were based on a revision to the animal body weight used to calculate the cancer potency factor from the oral slope factor. No criteria changes are adopted for noncarcinogens. Other revisions are editorial and adopted to improve overall clarity.

In response to comments regarding §307.6(d)(1), Table 2, human health criteria for chrysene and 1,2-dichloropropane were corrected, and the analytical method for free cyanide analysis has been incorporated into footnote 3.

§307.10, Appendices A - E and G

The commission adopts amended §307.7 to include the addition of a geometric mean criterion for Enterococci of 54 colonies per 100 milliliters (mL) for high saline inland waters with primary contact recreation 2. Other revisions are editorial and adopted to improve overall clarity.

§307.10, Appendices A - E and G

The commission adopts amendments to §307.10 to revise Appendices A - E and G. The adopted amendments to §307.10(1), Appendix A, include the addition of a footnote to Brushy Creek (Segment 1244) restricting the public water supply designation to within the Edwards Aquifer zones based on a lack of public water supply intakes. A footnote addition for Upper North Bosque River (Segment 1255) is also adopted to clarify that the portion of the segment from the confluence with Dry Branch upstream to the confluence with the North/South Forks North Bosque River in Erath County is intermittent with perennial pools based on a 1991 UAA. The UAA resulted in the creation of classified Segment 1255, which was adopted as part of the 1992 revisions to the TSWQS and approved by EPA in an action letter dated June 16, 1993. Adopted changes also include the deletion of a footnote that describes Mid Cibolo Creek (Segment 1913) as being an intermittent stream with perennial pools. This footnote, added in the 2018 revision to the TSWQS, had not been approved by EPA and was removed because further data evaluation is necessary. Additional adopted changes include revising the designated use of primary contact recreation 1 with a corresponding bacteria criterion of 126 colonies per 100 mL to a secondary contact recreation 1 use with a corresponding bacteria criterion of 630 colonies per 100 mL for San Miguel Creek (Segment 2108). This adopted change is based on the results from a recreational UAA. Other revisions are editorial and adopted to improve overall clarity.

The adopted amendments to §307.10(2), Appendix B, include the addition of the San Marcos River (Segment 1808) and

Choke Canyon Reservoir (Segment 2116) because they qualify as sole-source drinking water supplies in accordance with TWC, §26.0286. Other adopted changes include the removal of Greenbelt Lake (Segment 0223) and Lake Brownwood (Segment 1418) because they no longer qualify as sole-source drinking water supplies.

In response to comments regarding §307.10(2), Granger Lake (Segment 1247) is no longer being deleted from Appendix B, and Caldwell and Guadalupe counties were added to the "County" column for the new entry, San Marcos River, to better describe the general location of the water body. Other revisions are editorial and adopted to improve overall clarity.

The adopted amendments to §307.10(3), Appendix C, include reverting the segment descriptions for Lower Cibolo Creek (Segment 1902), Upper Cibolo Creek (Segment 1908), and Mid Cibolo Creek (Segment 1913) back to the most recent EPA-approved descriptions due to further data evaluation being necessary.

The adopted amendments to §307.10(4), Appendix D, include the addition of two water bodies along with their designated aquatic life uses and dissolved oxygen criteria. These additions are due to the results of extensive investigations via UAAs. All the water bodies are tributaries within the listed segment numbers as follows: Piney Creek (Segment 0604) and Little Pine Island Bayou (Segment 0607). A UAA also led to the replacement of an existing Appendix D entry for Buckners Creek (Segment 1402), which was replaced with two new entries for this water body to account for intermittent with pools and perennial flow regimes and to designate aquatic life uses and dissolved oxygen criteria for the two stream reaches based on the UAA. The segment number for the existing entry for County Relief Ditch was changed from Segment 0502 to Segment 0501 due to recent EPA approval of the revised boundaries for both segments in the 2018 TSWQS. Other revisions are editorial and adopted to improve overall clarity.

The adopted amendments to §307.10(5), Appendix E, include the addition of eight new site-specific copper water-effect ratios in the watersheds of Segments 0601, 0604, 0702, 1009, 2429, 2432, and 2441. The results from two site-specific copper biotic ligand models (BLMs) are also adopted for Segments 0202 and 0827. One existing entry for Segment 1001 has been reordered to arrange all table entries in numeric order by segment and permit numbers.

In response to comments for §307.10(5), Appendix E, the phrase "site-specific criteria" has been added to the second and fifth sentences of the introductory paragraph of the appendix for clarification purposes. Footnotes in the "Parameter" column were also revised for two existing entries in the watershed of Segment 0901 for Enterprise Products Operating, LLC (Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0002940000) to clarify that the site-specific criteria are applicable to the area near the outfall as opposed to the entire water body. Other revisions are editorial and adopted to improve overall clarity.

The adopted amendments to §307.10(7), Appendix G, include changing the presumed use of primary contact recreation 1 with a corresponding bacteria criterion of 126 colonies per 100 mL to a secondary contact recreation 1 use with a corresponding bacteria criterion of 630 colonies per 100 mL for South Lilly Creek in the Cypress Creek Basin (Segment 0409). This adopted change is based on the result of a recreational UAA. Due to construction activities that filled in much of Bullhead Bayou in the Brazos River Basin and rerouted the water body into a different watershed, adopted changes to Bullhead Bayou include delineations of the East and West reaches and updates to segment numbers (from Segment 1245 to Segment 1202) in order to reflect current conditions for both Bullhead Bayou and Unnamed tributary of Bullhead Bayou. Adopted changes also include a revised description of the unnamed tributary of Bullhead Bayou to reflect the delineation of Bullhead Bayou East. Other revisions are editorial and adopted to improve overall clarity.

In response to comments regarding §307.10(7), Appendix G, editorial changes were made to the description of Bullhead Bayou East.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code (TGC), §2001.0225, and determined the rulemaking is not subject to §2001.0225 because it does not meet any of the four applicability criteria listed in TGC, §2001.0225(a). According to subsection (a), §2001.0225 only applies to a major environmental rule, the result of which is to exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it does not exceed a standard set by federal law; does not exceed an express requirement of state law; does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and is not adopted solely under the general powers of the agency but, rather, specifically under 33 USC, §1313(c), which requires states to adopt water quality standards and review them at least once every three years; and TWC, §26.023, which requires the commission to set water quality standards and allows the commission to amend them. Therefore, this adopted rulemaking does not fall under any of the applicability criteria in TGC, §2001.0225.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. Comments were received, and they are addressed in the Response to Comments section.

Takings Impact Assessment

The commission evaluated this adopted rulemaking and performed an analysis of whether it constitutes a taking under TGC, Chapter 2007. The specific purpose of this rulemaking is to incorporate changes to the TSWQS deemed necessary based on the commission's triennial review of the standards, which mainly consist of incorporating new data on toxicity effects and from recent UAAs and clarifying the use of temporary standards. The adopted rulemaking will substantially advance this stated purpose by revising toxic criteria, individual water bodies' uses and criteria, and the temporary standards requirements in Chapter 307 of the commission's rules.

The commission's analysis indicates that TGC, Chapter 2007 will not apply to this adopted rulemaking because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under TGC, §2007.003(b)(4). CWA,

§303 requires the State of Texas to adopt water quality standards, review those standards at least once every three years, and revise the standards as necessary based on the review. TWC, §26.023 delegates the responsibility of adopting and revising the standards to the commission.

Nevertheless, the commission further evaluated this adopted rulemaking and performed an assessment of whether it constitutes a taking under TGC, Chapter 2007. Promulgation and enforcement of this adopted rulemaking will be neither a statutory nor constitutional taking of private real property. Specifically, the adopted regulations do not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more beyond that which will otherwise exist in the absence of the regulations. In other words, this rulemaking makes necessary revisions to the TSWQS without burdening, restricting, or limiting an owner's right to property and reducing its value by 25% or more. Therefore, the adopted rulemaking does not constitute a taking under TGC, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,*and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act implementation rules, 31 Texas Administrative Code (TAC) §505.22, and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the adopted rules include protecting, preserving, restoring, and enhancing the diversity, quality, quantity, functions, and values of coastal natural resources by establishing standards and criteria for instream water quality for Texas streams, rivers, lakes, estuaries, wetlands, and other water bodies. These adopted water quality standards will provide parameters for permitted discharges that will protect, preserve, restore, and enhance the quality, functions, and values of coastal natural resources.

CMP policies applicable to the adopted rules include 31 TAC §501.21. The adopted rulemaking will require wastewater discharge permit applicants to provide information and monitoring data to the commission so the commission may make an informed decision in authorizing a discharge permit, ensuring that the authorized activities in a wastewater discharge permit comply with all applicable requirements, thus making the rulemaking consistent with the administrative policies of the CMP.

The adopted rulemaking considers information gathered through the biennial assessments of water quality in the commission's Integrated Report of Surface Water Quality to prioritize coastal waters for studies and analysis when reviewing and revising the TSWQS. The TSWQS are established to protect designated uses of coastal waters, including protecting uses for recreational purposes and propagating and protecting terrestrial and aquatic life. The adopted rulemaking is consistent with the CMP's policies for discharges of municipal and industrial wastewater to coastal waters and how they relate to specific activities and coastal natural resource areas.

Promulgation and enforcement of these adopted rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with these CMP goals and policies, and these adopted rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission held a public hearing on May 2, 2022. The comment period closed on May 2, 2022. The commission received timely public comments from American Chemistry Council (ACC), Bayou City Waterkeeper (BCW), Carrizo/Comecrudo Tribe of Texas (C/C Tribe), Cibolo Creek Municipal Authority (CCMA), City of Round Rock (Round Rock), Coastal Alliance to Protect Our Environment (CAPE), Coastal Bend Council of Governments (CBCG), Coastal Bend Sierra Club Group (CBSCG), Coastal Conservation Association (CCA), Dow Chemical Company (Dow), Environment Texas (ET), Environmental Integrity Project (EIP), EPA, Environmental Stewardship (ES), Friends of the Brazos River (FBR), Friends of Padre (FP), Greater Edwards Aquifer Alliance (GEAA), Gulf Coast Bird Observatory (GCBO), Indivisible TX Lege (ITL), Ingleside on the Bay Coastal Watch Association (IBCWA), Inland Ocean Coalition (IOC), Jacob & Terese Hershey Foundation (JTHF), Lower Brazos Riverwatch (LBR), MesoAM SDG17 Coalition (MesoAM), National Wildlife Federation (NWF), Nurdle Patrol (NP), San Antonio Bay Estuarine Waterkeeper (SABEW), Save Buffalo Bayou (SBB), SPLASh/American Bird Conservancy (SABC), Sierra Club Lone Star Chapter (Sierra Club), Surfrider Foundation Texas Coastal Bend Chapter (Surfrider), Texas Campaign for the Environment (TCE), Texas A&M University-Corpus Christi (TAMUCC), Texans for Clean Water (TCW), Texas Chemical Council (TCC), Texas Industry Project (TIP), Texas Parks and Wildlife Department (TPWD), Turtle Island Restoration Network (TIRN), and 516 individuals.

Comments were also received from Tischler/Kocurek Environmental Engineers (T/K).

Response to Comments

General Comments Unrelated to TSWQS Changes

Comment

Twelve individuals provided general comments related to a variety of topics, including whether a business owner is allowed to pump out their own business septic tank as opposed to being required to use an approved service; ozone reduction, stronger enforcement on air pollution, and alternative fuels development to combat climate change; the need to better regulate a surface radioactive waste dump in West Texas; the ability to make it illegal to not recycle single-use plastic; the need for the world to stop using plastic; concerns that the state is turning into a desert; the need for infrastructure repairs to remove lead pipes; concerns regarding toxic sunscreen lotions contaminating rivers; the need for more information regarding recycling, along with more places to recycle; the burden placed on homeowners to purchase expensive water filters because municipal water suppliers cannot be trusted; the need to audit the City of Laredo Utilities Department because subdivisions stay without service for weeks; and how a robust plan to recycle plastics would go far to control microplastic pollution in waterways.

Response

The commission responds that these topics are outside the scope of this rulemaking.

General Comments Related to TSWQS Changes

Comment

Two hundred thirty-eight individuals encouraged the protection of waters in the state by providing general comments related to a variety of topics, including eliminating and cleaning up pollution; leading the way as a state; protecting humans, animals, and the environment; enacting stricter requirements and penalties; planning for the future; enforcing requirements; restoring animal habitat; protecting uses; encouraging wastewater reuse; preventing disease; adhering to federal requirements; protecting the economy; documenting pollution; finding wastewater disposal alternatives; providing environmental protection education; and enacting effective requirements.

Response

The commission acknowledges these comments and notes that, through this rulemaking, it is the commission's intention to strengthen the TSWQS's effectiveness when it comes to protecting human health and the environment.

Comment

ACC noted its deep commitment to creating a circular economy for plastics.

Response

The commission acknowledges this comment.

Comment

Sierra Club, TCE, ET, ITL, TIRN, ES, CAPE, BCW, NWF, C/C Tribe, GEAA, IBCWA, EIP, and FBR commented that the commission needed to extend the comment period for this rulemaking to May 15, 2022, because a correction to the initial publication of the proposed rulemaking was published in the *Texas Register* on April 15, 2022. According to the commenters, the extension was especially needed because the correction included underlining the new pre-production plastics language in §307.4(b)(8).

Response

The commission responds that an extension of the comment period was not necessary for several reasons. First, there is no legal requirement that a state agency extend its rulemaking comment period if it corrects the original *Texas Register* version of the proposed rulemaking. Second, there is no legal requirement that the commission's rulemaking comment period be a certain length. The statute cited by the commenters, TGC, §2001.023, requires thirty days' notice of an agency's intention to adopt a rule before it adopts the rule, not thirty days between the beginning and end of a comment period. The public comment statute, TGC, §2001.029(a), just requires that "a reasonable opportunity" be provided for the public to comment on a proposed rulemaking. And finally, the underlining required by TGC, §2001.024(b)(3) is not a substantive part of a rulemaking; it is a tool used to make it easier for someone to identify new language. Even without the underlining, the public still received notice of the proposed language in §307.4(b)(8) through the preamble, which stated that an explicit prohibition on the discharge of pre-production plastics had been added to §307.4 and referred to facilities subject to the prohibition under §307.4(b)(8). As paragraph (8) was entirely new, there was no question as to what language was new versus old. Also, the underlining in the proposed rule language maintained on TCEQ's website was always correct, so anyone who accessed that version of the rulemaking through the link provided in the preamble and rulemaking notice was able to see the underlining. Therefore, even before the *Texas Register* correction was published, the public received sufficient notice of the proposed language in §307.4(b)(8).

Comment

Sierra Club, TCE, ET, ITL, TIRN, ES, CAPE, BCW, NWF, C/C Tribe, GEAA, IBCWA, EIP, FBR, and 504 individuals noted the recently denied petition for rulemaking regarding pristine streams and recommended the commission take action on numeric nutrient criteria during this triennial review. All 504 individuals noted the importance of monitoring nutrient pollution and commented that monitoring alone is insufficient to protect pristine streams from harmful algal blooms and losses of economic development due to decreases in tourism.

Sierra Club, TCE, ET, ITL, TIRN, ES, CAPE, BCW, NWF, C/C Tribe, GEAA, IBCWA, EIP, and FBR asserted that the TSWQS do not adequately protect the state's waters from nutrient pollution, and the existing Nutrient Criteria Development Advisory Work Group has not been successful in implementing numeric criteria for nutrient pollution. The commenters recommended the adoption of a new designated use focused on pristine streams and prohibiting wastewater discharges into waters with that designated use. They provided additional recommendations for approaches towards developing criteria, including an example of how the Florida Department of Environmental Protection used the latest EPA guidance and stakeholder input to adopt numeric nutrient criteria for Florida.

Response

The commission responds that, as stated in the April 8, 2022, TCEQ commissioners' order with regard to the denial of the petition for rulemaking, TCEQ already addresses the concerns raised in the petition with a legally adequate program for assessing and protecting stream segments under the TSWQS and the agency's TPDES permitting program. No changes were made in response to these comments.

Comment

Sierra Club, TCE, ET, ITL, TIRN, ES, CAPE, BCW, NWF, C/C Tribe, GEAA, IBCWA, EIP, FBR, and 504 individuals commented that past recreational use category changes were not supported by the Clean Water Act, and the *E. coli* criteria are not sufficient to protect human health and the environment. They requested that the contact categories be consolidated using the more stringent bacteria criteria. Sierra Club, TCE, ET, ITL, TIRN, ES, CAPE, BCW, NWF, C/C Tribe, GEAA, IBCWA, EIP, and FBR also commented that by adding recreational use categories in previous revisions to the TSWQS, TCEQ has allowed additional bacterial contamination, prevented segments from being listed as impaired, and therefore not moved forward with the subsequently required TMDL action.

Response

The commission responds that it expanded the categories for recreational uses in previous TSWQS revisions to better characterize the different levels of water recreation activities that can occur in Texas. In the late 1980s and 1990s, a contact recreation use was broadly presumed for all surface waters in Texas, with the exception of eight site-specific classified segments, such as ship channels. As a result of these presumptions, there may be numerous water bodies with inappropriate recreational uses.

These additional uses provide the commission the ability to better assign appropriate recreational uses to water bodies.

Federal regulations in 40 CFR §131.10(c) allow States to "adopt sub-categories of a use and set the appropriate criteria to reflect varying needs of such sub-categories of uses." The subcategories of recreational uses and associated criteria in the TSWQS, which are protective of the recreational use categories and based on acceptable illness rates, were approved by EPA for Clean Water Act purposes and are based on EPA's 1986 *Ambient Water Quality Criteria for Bacteria.*

The commission evaluates water bodies on a site-specific basis to establish the appropriate recreation use following established recreational UAA processes. Some site-specific recreational standards in §307.10(7), Appendix G, of the TSWQS have been approved by EPA and others are pending EPA's review. For the biennial assessments of water quality in the commission's Integrated Report of Surface Water Quality, a water body's presumed, designated, or site-specific recreational use is used in the assessment. The commission continues to develop TMDLs as a management tool to address bacteria impairments in Texas.

No changes were made in response to these comments.

Comment

Sierra Club, TCE, ET, ITL, TIRN, ES, CAPE, BCW, NWF, C/C Tribe, GEAA, IBCWA, EIP, and FBR commented that it is not clear that marine bacterial standards are sufficiently protecting human health and requested that the commission evaluate the utility and sufficiency of using Enterococci as an indicator to measure fecal pollution in saline environments and move to adopt standards that are clearly related to protecting human health and the environment.

Response

The commission responds that Enterococci is the EPA-recommended fecal bacteria indicator for marine water. Enterococci was first recommended as the fecal indicator for bacteria in marine water in EPA's 1986 *Ambient Water Quality Criteria for Bacteria.* EPA later conducted the National Epidemiological and Environmental Assessment of Recreational Water (NEEAR) study. Based on the NEEAR study and past studies utilized in developing EPA's 1986 *Ambient Water Quality Criteria for Bacteria,* EPA developed the 2012 Recreational Water Quality Criteria (RWQC) recommendations. In the 2012 recommendations, Enterococci continued to be EPA's recommended fecal indicator bacteria for marine water. EPA also provided a geometric mean of 35 colony forming units per 100 milliliters (cfu/100 mL) for Enterococci as one recommended criterion in the 2012 RWQC, which is considered protective of primary contact recreation in marine waters. The commission's geometric mean criterion for primary contact recreation 1 for saltwater is consistent with this EPA-recommended geometric mean.

Comment

Sierra Club, TCE, ET, ITL, TIRN, ES, CAPE, BCW, NWF, C/C Tribe, GEAA, IBCWA, EIP, and FBR urged TCEQ to rapidly adopt numerical salinity gradient criteria. The commenters stated that establishing a baseline for salinity gradients along the Texas coast is critical because climate change-induced sea level rise and coastal erosion will likely increase the salinity content in the Texas Gulf Coast. They noted that the Texas Gulf Coast has a high biodiversity of species, including the endangered smalltooth sawfish, which may be affected by changes in salinity. The commenters acknowledged the existing provision in §307.4(g)(3) regarding activities completed towards establishing salinity criteria in estuaries, but the commenters expressed concern on the rate of progress for criteria development.

Response

The commission responds that long-term salinity monitoring is still ongoing in accordance with §307.4(g)(3). The commission also notes that impacts to state and federally listed endangered species are considered in the commission's water quality management programs.

§307.2, Description of Standards

Comment

TPWD expressed support for the efforts to change language regarding temporary standards to improve consistency with the federal rules listed in 40 CFR §131.14. However, TPWD recommended that the proposed language distinguish how temporary standards are expressed for permittees versus water bodies and provided suggested edits to that effect.

Response

The commission considers the current organizational structure of §307.2(g)(1) to be sufficient. No changes were made in response to this comment.

Comment

EPA recommended revising §307.2(g)(1) from "When a temporary standard is adopted for permittees or water bodies, the temporary standard *may* be expressed as one of the following" to "When a temporary standard is adopted for permittees or water bodies, the temporary standard *must* be expressed as one of the following." This change would clarify that there are no other allowable options under the federal water quality standard regulation for expressing the highest attainable condition.

EPA and TPWD also recommended the addition of language to §307.2(g)(1) to specify that a temporary standard may be expressed as "the highest attainable interim criterion." EPA stated that although language in the 2018 TSWQS can be interpreted to include this approach, presenting all three options under paragraph (1) would provide clarity for stakeholders.

Response

The commission agrees with these comments, and the recommended changes to the language in §307.2(g)(1) are adopted.

Comment

EPA recommended revising "pollution" in §307.2(g)(1)(A) to "pollutant," which is already included in subparagraph (B).

Response

The commission agrees with the comment, and the recommended change to the language is adopted.

Comment

EPA recommended prefacing §307.2(g)(1)(B) with "If no additional feasible pollutant control technology can be identified," for consistency with the federal water quality standard regulation.

Response

The commission agrees with the comment, and the recommended change to the language is adopted.

Comment

EPA recommended adding clarification in §307.2(g)(1)(B) that the remediation plan would need to be adopted and implemented, noting that the remediation plan would need to meet the requirements of a pollution minimization program under 40 CFR §131.3.

Response

The commission responds that requirements regarding implementation of a remediation plan are specified in the *Procedures to Implement the Texas Surface Water Quality Standards* (RG-194). No changes were made in response to this comment.

Comment

EPA recommended revising the proposed language in §307.2(g)(4) to read "within 30 days of completion, the underlying designated use or criterion will become applicable and must be used when implementing subsequent federal CWA activities." The proposed language could be misinterpreted as the "existing water quality standards" being the temporary standard.

Response

The commission agrees that additional clarity would be helpful in the rule language. To that end, the word "underlying" has been added before the phrase "water quality standards" in the last sentence of §307.2(g)(4).

Comment

EPA recommended including a reference to the federal regulation at 40 CFR §131.14 to cover any requirements that are not specifically identified in §307.2(g).

Response

The commission responds that inclusion of the federal regulation reference was discussed in a Surface Water Quality Standards Advisory Work Group (SWQSAWG) meeting with stakeholders in preparation for this revision, and the decision was made to not incorporate §131.14 by reference into the rule. No changes were made in response to this comment.

§307.3, Definitions and Abbreviations

Comment

TPWD recommended that the term "effluent condition" be defined in §307.3(a).

Response

The commission responds that the term "effluent condition" is not defined in federal regulations. However, for clarity and consistency with federal regulations, the commission revised the provision at §307.2(g)(1)(A) as part of this rulemaking to specify "the interim effluent condition that reflects the greatest pollutant reduction achievable."

Comment

An individual commented that the proposed definition of "bioaccumulation factor" in §307.3(a)(9) is essentially the same as the existing definition for "bioconcentration factor" in §307.3(a)(10) and may misrepresent actual processes in the aquatic ecosystem by discounting the importance of biomagnification.

Response

The commission responds that unlike the definition for bioconcentration factor, which only accounts for exposure directly from water, the definition for bioaccumulation factor accounts for all routes of exposure, including food sources. No changes were made in response to this comment.

Comment

Surfrider, SABEW, CAPE, LBR, SBB, FP, ET, NP, GCBO, IOC, TAMUCC, SABC, MesoAM, TCW, CBCG, CBSCG, JTHF, TPWD, T/K, and four individuals expressed general support for the definition of "pre-production plastic" in §307.3(a)(50).

Response

The commission acknowledges these comments and notes the proposed definition has been removed from this rulemaking.

Comment

SABEW and one individual recommended revising the definition of pre-production plastic in §307.3(a)(50) to include fragments or broken pieces of a pellet (nurdle).

Response

The commission acknowledges these comments and notes the proposed definition has been removed from this rulemaking.

Comment

Surfrider, SABEW, CAPE, LBR, SBB, FP, ET, NP, GCBO, IOC, TAMUCC, SABC, MesoAM, TCW, CBCG, CBSCG, JTHF, and four individuals recommended revising the proposed definition of pre-production plastic in §307.3(a)(50) by replacing "organic polymers" with "petroleum and biologically derived polymers" since EPA has documented that bioplastics can be designed to be structurally identical to petroleum-based plastics and can last in the environment for the same period of time as petroleum-based plastics.

Response

The commission acknowledges these comments and notes the proposed definition has been removed from this rulemaking.

§307.4, General Criteria

Comment

Sierra Club, TCE, ET, ITL, TIRN, ES, CAPE, BCW, NWF, C/C Tribe, GEAA, IBCWA, EIP, FBR, Surfrider, SABEW, LBR, SBB, FP, NP, GCBO, IOC, TAMUCC, SABC, MesoAM, TCW, CBCG, CBSCG, JTHF, EPA, TPWD, CCA, and ten individuals expressed general support for the prohibition on discharging pre-production plastic, which was proposed in §307.4(b)(8). SABEW and one individual asserted that the fact that the rule applies to both stormwater and wastewater discharges is important.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

CCA noted the presence of pollution from pre-production plastics as a global and local concern, including impacts to marine life and human health. An individual noted the presence of pollution from pre-production plastics as a concern in Texas and nationally, including impacts to aesthetics and bioaccumulative toxins (including mercury, DDT, and polycyclic aromatic hydrocarbons) adsorbing to plastic pollution. TPWD noted the importance of keeping plastics out of the environment. An individual also noted the prevalence of nurdles collected by the citizen science project Nurdle Patrol from Texas beaches in areas of manufacturing and

transportation, such as railroads, nurdle distribution sites, and molding factories. Sierra Club, TCE, ET, ITL, TIRN, ES, CAPE, BCW, NWF, C/C Tribe, GEAA, IBCWA, EIP, and FBR described the risks associated with pre-production plastic pollution, including that pellets can act as vessels for toxic pollutants and cause issues up and down the food chain through bioaccumulation. SABEW and one individual noted that other contaminants in the water column may sorb onto plastics, and plastics may contain additives that have an additional negative effect on the environment.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

TCC, ACC, TIP, Dow, and T/K opposed the proposed provision in §307.4(b)(8) or urged the commission not to adopt the prohibition on discharges of pre-production plastic detailed in §307.4(b)(8) since there is no federal or state requirement and/or statutory authority to do so. TIP noted it has significant concerns regarding the proposed prohibition and recommended either rewording the proposed language to constitute a clarification of the existing narrative standard or withdrawing the prohibition from the proposal.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

ACC and Dow noted their support of the industry stewardship program Operation Clean Sweep. ACC recommended Operation Clean Sweep as an alternative to the prohibition proposed in §307.4(b)(8), which was summarized by ACC as an alternative to zero-discharge regulations. ACC also urged the commission to promote best practices programs, such as Operation Clean Sweep, to help improve water quality.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

Sierra Club, TCE, ET, ITL, TIRN, ES, CAPE, BCW, NWF, C/C Tribe, GEAA, IBCWA, EIP, FBR, and 504 individuals recommended that the prohibition on the discharge of pre-production plastic, as proposed in §307.4(b)(8), should address all plastic pollution, including other microplastics that may not be visible to the naked eye. Surfrider, SABEW, CAPE, LBR, SBB, FP, ET, NP, GCBO, IOC, TAMUCC, SABC, MesoAM, TCW, CBCG, CBSCG, JTHF, and eight individuals expressed concern that inclusion of the term "visible" will allow regulated facilities to ignore micro- and nano-plastics, which they note have been proven to be harmful to the environment and human health, including DNA damage, endocrine disruption, cancer, and diabetes when ingested or inhaled. SABEW and one individual also noted that microplastics are harmful to the environment and that plastics can be small enough to be transported by wind and rain into stormwater.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

Surfrider, SABEW, CAPE, LBR, SBB, FP, ET, NP, GCBO, IOC, TAMUCC, SABC, MesoAM, TCW, CBCG, CBSCG, JTHF, and eight individuals recommended the term "visible" in §307.4(b)(8) to be further defined as "able to see with the naked eye without special equipment, from a distance of three (3) feet. If a person requires prescription eyeglasses or contact lenses to achieve normal vision, those must be worn while monitoring for potential discharges." The commenters also provided recommendations for locating discharged plastics.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

Regarding the proposed revision in §307.4(b)(8), one individual commented that additional language is needed so that "feasible" does not become "easily done" and suggested a reference to practices for other particulates or practices at other plants around the country. Sierra Club, TCE, ET, ITL, TIRN, ES, CAPE, BCW, NWF, C/C Tribe, GEAA, IBCWA, EIP, FBR, and 504 individuals noted "where determined feasible" should be removed from the prohibition. Sierra Club, TCE, ET, ITL, TIRN, ES, CAPE, BCW, NWF, C/C Tribe, GEAA, IBCWA, EIP, and FBR asserted removal is necessary because determining feasibility, economic practicability, and what is achievable in light of best industry practices are contrary to the public interest.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

One individual noted the need for assurances that an offending company will not be able to evade responsibility for discharging pre-production plastic just because it sends a note from the plant engineer that complains compliance with the proposed prohibition in §307.4(b)(8) would be hard.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

SABEW and one individual recommended that proposed §307.4(b)(8) should make it clear that the use of BMPs does not in any way absolve the permittee of the prohibition on discharging pre-production plastic. The commenters also suggested the commission provide specific suggestions for the BMPs to be used by facilities and in permit requirements.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

Surfrider, SABEW, CAPE, LBR, SBB, FP, ET, NP, GCBO, IOC, TAMUCC, SABC, MesoAM, TCW, CBCG, CBSCG, JTHF, and eight individuals recommended revisions in §307.4(b)(8) to clarify that sweeping or washing plastics into stormwater or wastewater is not a BMP. SABEW and one individual recommended revisions to §307.4(b)(8) to further clarify that BMPs should prohibit permittees from sweeping spilled plastics into stormwater

drainage areas unless the structures have mechanisms to remove pre-production plastic prior to discharge. SABEW and one individual also recommended a separate stormwater system from the normal stormwater system and BMPs such as retention ponds.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

TCC, ACC, TIP, Dow, and T/K expressed concern that feasible technologies do not currently exist to comply with the proposed pre-production plastic prohibition located in §307.4(b)(8). ACC noted that the proposal would impose significant costs on stakeholders. T/K asserted that the prohibition is a technology-based effluent standard, and if TCEQ is proposing it as such, TCEQ would have to provide technical supporting analyses demonstrating the standard is achievable and estimating the cost for compliance. TCC noted that the costs provided in the rule preamble's fiscal note associated with changes to 30 TAC §307.4 were conservative cost estimates that will likely increase significantly during design and implementation, and there would be ongoing operational and maintenance costs. TCC noted it is not currently aware of any current technology that can assure absolute compliance with this proposed prohibition, and each facility has a unique footprint that will require control technologies tailored to the individual facility. TCC recommended that if TCEQ considers adopting the prohibition, the language should be revised to focus on the implementation of feasible BMPs as defined in 30 TAC §307.3(a)(7), similar to the guidelines in Operation Clean Sweep practices, instead of a strict no-discharge prohibition of visible pre-production plastic.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

Surfrider, SABEW, CAPE, LBR, SBB, FP, ET, NP, GCBO, IOC, TAMUCC, SABC, MesoAM, TCW, CBCG, CBSCG, JTHF, and nine individuals recommended that spilled or discharged pre-production plastic must be regulated as a Class 2 industrial solid waste.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

Surfrider, SABEW, CAPE, LBR, SBB, FP, ET, NP, GCBO, IOC, TAMUCC, SABC, MesoAM, TCW, CBCG, CBSCG, JTHF, and eight individuals provided specific recommendations for requirements derived from House Bill 3814 by Representative Hunter, which was filed during the regular 87th Legislative Session, to be included in conjunction with the language proposed in §307.4(b)(8). These included requirements for reporting spills to the commission within two days after detection of a discharge or release and ensuring cleanups are completed without harm to the ecosystem; containment systems to be designed and maintained to capture floating and sinking plastics that have a capacity to handle precipitation from 100-year, 24-hour storm events as determined by the National Oceanic and Atmospheric Administration; and, for facilities that discharge stormwater associated with industrial activity, inspecting a facility for eligibility before granting an applicant's Conditional No Exposure Exclusion for TCEQ's MSGP.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

TPWD supported the prohibition on discharging visible pre-production plastic in §307.4(b)(8), the inclusion of questions in TPDES permit applications to identify facilities that handle plastic, and including prohibitions in final industrial TPDES permits regarding the release of plastic particulates of any size into the environment.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

TCC, TIP, and Dow asserted the prohibition on discharging pre-production plastic in §307.4(b)(8) is a new, more stringent regulation than what currently exists for floating debris that is pre-production plastic, and the commenters requested that the commission grant compliance schedules for facilities as authorized by §307.2(f). TCC requested that TCEQ not only allow for the full three-year compliance period specified in §307.2(f) but also provide allowances for site-specific schedules for more complex control technologies, which could require a lengthy period of time to implement. Dow asserted that facilities would require significant time to implement control technologies and recommended that, at a minimum, TCEQ allow a multiyear implementation plan and provide a mechanism for evaluating longer-term implementation projects on a case-by-case basis. TCC recommended that TCEQ provide sufficient time to allow for research and development of new control technologies that do not currently exist and for the implementation of these technologies. TIP recommended that if TCEQ proceeds with the prohibition, the agency should adopt an express statement that compliance periods would be available for water quality-based effluent limitations based on the new standard.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

TCC, TIP, and Dow recommended the commission further clarify the proposed prohibition on discharging pre-production plastic in §307.4(b)(8) by specifying the point of compliance as the final permitted outfall. Dow recommended the commission specify the prohibition only applies to water bodies outside the fence line of affected facilities and provide guidance to ensure consistent application throughout industry. SABEW and one individual commented that plastics should be considered discharged if they leave the final discharge point or outfall gate, even if on the property of the permittee.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

Surfrider, SABEW, CAPE, LBR, SBB, FP, ET, NP, GCBO, IOC, TAMUCC, SABC, MesoAM, TCW, CBCG, CBSCG, JTHF, and ten individuals expressed concern that §307.4(b)(8) contains no obligations to conduct monitoring or reporting of discharges of pre-production plastic or specifications of punishment for failure to do so. The commenters stated that enforcement penalties issued for violations must be large enough to deter future violations and recommended that TCEQ consider the wealth and size of a violator when calculating the penalty. An individual recommended a strict enforcement policy, including BMPs and meaningful fines appropriate for the size of the company having the violation. An individual also recommended that permittees should be required to report and clean up any spills inside and outside their fence line within 24 hours after plastics are recorded and make all reporting of plastic pellet, flake, and powder violations, spills, and cleanups open to the public. An individual also noted the utility of auto-sampling devices to monitor wastewater discharges for plastics. SABEW and one individual expressed concern that the proposed rule does not contain sufficient accountability mechanisms to ensure compliance and recommended that permittees that produce, handle, transport, or use microplastics should be required to obtain a permit and monitor outside all their discharge points, including outside their outfalls and at least 50 feet in all directions from the discharge location. SABEW and one individual also recommended that monitoring should be required the day after every 1-year, 1-hour storm event, for a 1-year/24-hour storm event or more, and at least once a month within 24 hours of a discharge, with additional monitoring requirements if plastics are detected. SABEW and one individual also recommended that monthly reports contain specific requirements and be made available to the public within a week of completion and that permittees impounding stormwater behind structural barriers obtain certification twice annually.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

SABEW and two individuals recommended the commission encourage citizen scientists to monitor around plastic facilities and facilitate the reporting of incidents by citizens using tools such as phone applications or a reporting form. SABEW and one individual recommended articulating standards for accepting citizen monitoring information and compensation for citizen scientists who document unauthorized discharges that result in violations or cleanups and suggested a process to allow the citizen scientists to direct compensation funds toward a local environmental project or the commission.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

SABEW and one individual expressed concern that the prohibition on discharging pre-production plastic in §307.4(b)(8) does not specify requirements for reporting a discharge, cleaning up the discharge, and providing details about the cleanup. The commenters requested that the prohibition be revised to require documented reporting of discharge events, including the location of the discharge and volume of discharged plastics. The commenters also stated that cleanup reports should be made publicly available and recommended that the use of high-pressure hydraulic flushing of pellets from vegetation should not be allowed without TCEQ approval. The commenters also recommended that §307.4(b)(8) include a requirement that a person conducting monitoring must exercise reasonable efforts to locate discharged plastics along shorelines and under vegetation that may obscure the person's view of the ground.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

TCC, TIP, and Dow expressed concern that the prohibition on discharging pre-production plastic proposed in §307.4(b)(8) could be used to penalize existing facilities for historical plastic discharges that may not have been released by the existing facility. TCC suggested the commission adopt, through guidance, a specification that the discharge prohibition is applicable only to new discharges with a direct and traceable link to the facility. T/K asserted the discharge prohibition is unenforceable because finding pellets near a permitted outfall is no guarantee they are present due to a discharge from that outfall.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

TCC, TIP, and Dow requested that the commission revise the proposal located in §307.4(b)(8) to clarify that a regulated entity will have the opportunity to remediate the release of any visible plastic by cleaning them up before the commission classifies any release as a violation. TCC also recommended that the commission include reasonable and appropriate remediation timelines that take into consideration elements such as property access, waterway access, waterway traffic, and permitting requirements.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

TCC, TIP, and Dow requested that the commission include in guidance the conditions under which the proposed prohibition on discharging pre-production plastic in §307.4(b)(8) will apply, such as those specified at §§307.4(a) and 307.9(b). Dow requested that the commission include a mechanism for excluding extreme weather conditions from these requirements.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

SABEW and one individual expressed concern with the commission's enforcement process as it related to historical experiences with the Formosa facility. The commenters recommended that the commission consider the wealth of the violator and costs forgone by violators when assessing fines. The commenters also asserted that fines for violators are grossly underestimated.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

TCC and Dow expressed concern that the prohibition on discharging pre-production plastic in §307.4(b)(8) would cause confusion rather than clarification, is not a criterion at all, and would be more appropriate as an implementation mechanism. TCC, TIP, and T/K asserted the prohibition is more than a clarification because the no-discharge prohibition is a zero-discharge standard. TIP considered the prohibition to be a new numeric criterion. TCC asserted additional confusion regarding the implementation and applicability of mixing zones and zones of initial dilution due to the prohibition. TIP expressed concern that the prohibition on discharging visible pre-production plastic conflicts with existing narrative criteria in §307.4(b)(2), which do not currently include a zero-discharge standard.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

TCC, ACC, TIP, Dow, and T/K expressed concern that the zero-discharge standard in §307.4(b)(8) for a non-toxic material has not been scientifically justified, and TCEQ has not followed requirements in TWC, §26.023 regarding the use of quality assured data to develop standards. The commenters requested that TCEQ share the scientific rationale utilized to justify the proposed revision. TCC recommended that TCEQ could have developed a proposal based on the results of a scientific study and taken into account what can be accomplished through enforcement of the existing requirements for floating debris. TIP asserted that TCEQ did not and cannot articulate a sound scientific rationale for the plastics provision to impose a zero-discharge standard. Dow urged TCEQ to reconsider the proposed revisions to ensure that an appropriate administrative record is developed.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

ACC expressed concern that the prohibition on discharging visible pre-production plastic located in §307.4(b)(8) requires a robust stakeholder process to ensure the commission gains a deeper understanding of the needs, interests, concerns, and experiences of all stakeholders. ACC urged the commission to initiate a robust stakeholder process to ensure all views and knowledge are taken into account. ACC also noted that the decision-making process should be fully transparent and informed through public engagement and review.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

TCC, TIP, Dow, and ACC asserted that the discharge prohibition for visible pre-production plastic in §307.4(b)(8) is more than a clarification and requested that the commission explain the rationale for considering the changes as only a clarification. TIP asserted that the existing standard applicable to visible pre-production plastic has been in place for decades; reimagining its meaning by purporting to make a clarification is inconsistent with its plain language and not a sound precedent for how water quality standards have been, or should be, adopted. T/K asserted that the prohibition is not a clarification and that existing §307.4(b)(2) is not a zero-discharge standard. T/K also asserted that if the clarification was applied to existing §307.4(b)(2), it would affect every municipal and industrial discharger in the state, and the "essentially free" specification in the existing regulation provides TCEQ sufficient authority to enforce this rule on plastics. T/K also recommended adding a single sentence to §307.4(b) stating that the provision applies to pre-production plastic as floating and suspended materials would be a clarification and would not constitute a major environmental rule change.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

TIP, Dow, and T/K expressed concern that the proposed prohibition in §307.4(b)(8) on discharging pre-production plastic is being promulgated by the commission in response to a specific court ruling and settlement agreement, *San Antonio Bay Estuarine Waterkeeper v. Formosa.* TIP asserted that the court did not purport to remake law, interpret existing permit conditions, or otherwise prescribe the proposed rulemaking. T/K asserted that the existing regulations in §307.4(b)(2) are sufficient for TCEQ to control wastewater discharges of pre-production plastic and need to be adequately enforced.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

TIP and Dow provided alternative language to further clarify the prohibition language in §307.4(b)(8) by specifying there shall be essentially no discharges of pre-production plastic that are conducive to producing adverse responses in aquatic organisms or putrescible sludge deposits or sediment layers that adversely affect benthic biota or any lawful uses. TIP recommended that the BMP language in proposed §307.4(b)(8) be removed because it may be more appropriate to implement it as a permit condition.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

EPA recommended amending the prohibition on discharging pre-production plastic in §307.4(b)(8) by including an expression of the desired condition of waters in the state, should the commission intend for the prohibition to be used for all CWA purposes, including assessment under CWA, §303(d).

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

TIP expressed concern that the plastic provisions in §307.4(b)(8) had not been properly noticed under the Texas Administrative Procedure Act, TGC, §2001.024.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

T/K expressed concern that the prohibition proposed in §307.4(b)(8) is substantially more restrictive than the existing rule and is a major new environmental rule subject to the regulatory analysis requirements of TGC, §2001.0025. TIP asserted that the plastics provision would "exceed a standard set by federal law" and constituted a major environmental rule.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

Comment

TIP asserted that the first sentence of the newly proposed language in §307.4(b)(8) is unqualified.

Response

The commission acknowledges these comments and notes that proposed §307.4 has been removed from this rulemaking.

§307.5, Antidegradation

Comment

Sierra Club, TCE, ET, ITL, TIRN, ES, CAPE, BCW, NWF, C/C Tribe, GEAA, IBCWA, EIP, and FBR commented that provisions regarding Tier 2 in §307.5(b)(2) are inconsistent with federal regulations, and current language undermines the purpose of the Tier 2 review. The commenters recommended that the commission remove or define "de minimis" in §307.5(b)(2) and require a meaningful alternatives analysis in TPDES permitting.

Response

The commission responds that the existing antidegradation policy in §307.5 has been approved by EPA and meets federal requirements at 40 CFR §131.12. The *Procedures to Implement the Texas Surface Water Quality Standards* (RG-194) provide guidance on how the antidegradation policy is implemented in TPDES permits. No changes were made in response to this comment.

§307.6, Toxic Materials

Comment

T/K commented on two footnotes in §307.6(c)(1), Table 1. Footnote 2 specifies that compliance with the standard for free cyanide will be determined with the analytical method for available cyanide. T/K noted that there is also an analytical method for free cyanide approved at 40 CFR Part 136. T/K recommended that footnote 2 include that the method for free cyanide analysis is also acceptable for determining compliance. T/K noted that without this change to footnote 2, the result would be that a method specific for free cyanide would not be authorized to demonstrate compliance.

Regarding footnote 3, T/K questioned whether the current numeric criteria for PCBs, which is based on EPA's Integrated Risk Information System (IRIS) database, justifies the standard being set based on the sum of all congeners, isomers, homologs, or Aroclors. T/K noted that review of the data in IRIS suggests that almost all toxicology data are based on the Aroclors, not on the much longer list of congeners, isomers, and homologs that is now identifiable using EPA's proposed analytical method. Furthermore, T/K noted that EPA's proposed analytical method that would measure dozens or more congeners has never been approved at 40 CFR Part 136. Therefore, T/K recommended that TCEQ reevaluate footnote 3 to determine if it is scientifically justified at this time.

Response

The commission responds that the inclusion of the analytical method for free cyanide analysis has been incorporated into footnote 2 of §307.6(c)(1), Table 1 as well as footnote 3 of §307.6(d)(1), Table 2 for consistency. The commission may consider alterations to footnote 3 of §307.6(c)(1), Table 1, which regards analytical methods for PCBs, in a future revision of the TSWQS.

Comment

EPA expressed support for the adoption of the updated cadmium aquatic life criteria in §307.6(c)(1), Table 1, but noted a typographical error in the formula for the proposed chronic freshwater criterion. EPA commented that for consistency with the current nationally recommended criterion, the slope of the chronic freshwater criterion should be 0.7977 rather than 0.7997 as included in the proposed TSWQS.

Response

The commission agrees with this comment, and the recommendation to correct the typographical error has been incorporated into the adopted aquatic life criteria in §307.6(c)(1), Table 1.

Comment

T/K commented that the language in §307.6(c)(6) includes the following sentence: "There must be no lethality to aquatic organisms that move through a ZID, and the sizes of ZIDs are limited in accordance with §307.8 of this title." T/K noted that in a recent administrative hearing before the State Office of Administrative Hearings (SOAH), the contention was made by protestants to a draft permit that this sentence must be interpreted as zero lethality, which in fact is scientifically impossible to prove. T/K asserted that the quoted sentence directly conflicts with §307.6(e)(1), which states, "Acute total toxicity levels may be exceeded in a ZID, but there must be no significant lethality to aquatic organisms that move through a ZID." T/K noted that when the commissioners acted on SOAH's proposal for decision, they concluded the meaning of the no lethality provision in §307.6(c)(6) should be interpreted as no significant lethality as specified at §307.6(e)(1). T/K requested that TCEQ revise the no lethality provision in §307.6(c)(6) by adding the word "significant" to make it consistent with §307.6(e)(1) and the commissioners' decision.

Response

The commission responds that the issue decided by the commissioners at their May 19, 2021, agenda with regard to lethality was that the correct standard to apply in the case in question was §307.6(e)(1) rather than §307.6(c)(6) or 307.8(b)(2), not how to interpret §307.6(c)(6). The commissioners actually referred to §307.6(e)(1) as the less stringent standard of the three. The commission also notes that the language in §307.6(c)(6) relates to specific numerical acute criteria for toxic substances, while the language in §307.6(e)(1) addresses total toxicity of permitted dischargers. As such, these two paragraphs of the rule are not discussing the same issue in relation to lethality. No changes were made in response to this comment.

Comment

EPA expressed support for the use of updated toxicity values and bioaccumulation factors (BAFs) for calculating human health criteria in §307.6(d)(1), Table 2.

Response

The commission acknowledges this comment.

Comment

Sierra Club, TCE, ET, ITL, TIRN, ES, CAPE, BCW, NWF, C/C Tribe, GEAA, IBCWA, EIP, and FBR commented that TCEQ should provide sufficient justification for weakening human health numeric criteria for carcinogens in §307.6(d)(1), Table 2, especially if TCEQ can already protect human health with the current numeric standards. The commenters stated that TCEQ explained that proposed changes to the human health criteria for carcinogens are based on a revision of oral slope factors for benzo(a)anthracene, benzo(a)pyrene, chrysene, 1,2-dichloropropane, and 1,3-dichloropropene, but despite these explanations, the concentrations are alarming without adequate justification. The commenters also commented that it remains unclear from both the background and the proposed standards how these changes in method were ascertained, including whether they came from EPA, TCEQ, or elsewhere. The commenters also stated that any change to the oral slope factor in measuring the amount of permissible carcinogenic pollution is intended to be used as a minimum basis, and if TCEQ can regulate such carcinogens at a lower and safer amount (such as at present), the justification to permit more carcinogenic pollution that risks human health should be better reasoned than simply because it is allowable.

Response

The commission responds that triennial revisions of the TSWQS are performed in part to include new scientific data on the effects of chemicals and pollutants, and updates to the human health criteria found in §307.6(d)(1), Table 2, are based on new information and studies on the potential toxic effects of chemicals of concern on human health. Revisions to Table 2 were presented to the SWQSAWG on March 9, 2020. To prepare stakeholders for the March 2020 SWQSAWG meeting, a handout explaining the basis for the changes to Table 2 and a spreadsheet showing all the inputs, equations, and changes to numeric criteria were posted on the agency's SWQSAWG webpage (www.tceq.texas.gov/waterquality/standards/stakeholders/swqsawg.html) before the meeting occurred. Both the handout and the spreadsheet remain available on the SWQSAWG webpage. Updates to the factors used for toxic numeric criteria were conducted in accordance with the sources cited in §307.6(d)(3)(A), and it is not unusual for criteria values to be updated based on new data. No changes were made in response to this comment.

Comment

EPA commented that the proposed fish consumption criteria for dichloromethane (75-09-2) and tetrachloroethylene (127-18-4) included in revisions to §307.6(d)(1), Table 2, are based on updated reference doses for non-carcinogenic effects. EPA noted these criteria were calculated using reference doses available in EPA's IRIS and the state's assumptions for childhood exposure factors. EPA published updated procedures for calculating human health criteria in *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health* in 2000. Under CWA, §304(a), EPA published updated human health criteria recommendations in June 2015 based on the 2000 methodology and other information. EPA commented that these updated recommendations include revised cancer slope factors and reference doses (RfDs); use of relative source contributions (RSCs) in criteria for non-carcinogens to account for other sources of exposure (e.g., food or air); use of BAFs instead of bioconcentration factors; and derivation of BAFs using aquatic trophic levels. EPA noted that several components of the revised human health methodology, such as BAFs and use of a scaling factor of 3/4 to adjust doses in toxicity studies from animal weight to human weight, have been incorporated during previous revisions of the TSWQS. EPA recommended using exposure factors based on updated information located in the 2011 *Exposure Factors Handbook* (with updated chapters available online) to calculate human health criteria. When deriving human health criteria for noncarcinogens and nonlinear carcinogens, EPA recommended including an RSC factor to account for sources of exposure other than drinking water and consumption of fish and shellfish from inland and nearshore waters. EPA noted that using an RSC ensures the level of a chemical allowed by a water quality criterion, when combined with other exposure sources, will not result in exposures that exceed the RfD and helps prevent adverse health effects from exposure to a given chemical over a person's lifetime. EPA noted that chapter four of EPA's 2000 human health methodology includes an approach for determining an appropriate RSC for a given pollutant ranging in value from 0.2 to 0.8 to ensure drinking water and fish consumption alone are not apportioned the entirety of the RfD.

Response

The commission responds that when updating the cancer slope factor and RfD inputs for this revision, the commission used the latest information found in EPA's IRIS assessment in accordance with §307.6(d)(3)(A). The commission supports using

information located in IRIS to have a consistent, peer-reviewed source for

toxicity factors that can be used throughout the agency and to create consistency

among all program areas.

The commission began using childhood consumption factors for noncarcinogen criteria calculations and BAFs, where available, for all human health criteria calculations during the 2010 revision of the TSWQS, in accordance with EPA's *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health* (2000). EPA's recommended RSC factors have not been utilized in the human health calculations, and this deviation from federal guidance has been consistently employed by the commission as documented in the EPA-approved 2010, 2014, and 2018 revisions to human health criteria. No changes were made in response to these comments.

Comment

EPA commented that the calculations for chrysene (218-01-9) in TCEQ's 2020 spreadsheet, which was used to derive the revised human health criteria for this substance in §307.6(d)(1), Table 2, included a conversion of the 2/3 scaling factor to the 3/4 scaling factor to adjust doses in toxicity studies from animal weight to human weight. EPA noted this conversion was appropriate for the cancer slope factor previously used for benzo(*a*)pyrene. However, EPA stated that the updated slope factor for benzo(*a*)pyrene uses the 3/4 scaling. With this change, EPA calculated a water and fish criterion of 9.96 µg/L and fish consumption criterion of 10.26 µg/L.

EPA also commented that a similar error with the scaling factor appears to have occurred in the calculation of human health criteria for 1,2-dichloropropane (78-87-5). With removal of the conversion of the scaling factor for criteria calculations, EPA obtained a water and fish criterion of 9.17 µg/L and a fish consumption criterion of 301.98 µg/L (for carcinogens). However, EPA noted that EPA's maximum criterion level for 1,2-dichloropropane in the current TSWQS is more stringent than EPA's recalculated water and fish criterion of 9.17 µg/L.

Response

The commission agrees with these comments. The scaling factor corrections for chrysene and 1,2-dichloropropane have been made in the calculations, and the revised human health criteria for both chrysene (water and fish criterion and fish consumption criterion) and 1,2-dichloropropane (fish consumption criterion) have been incorporated into §307.6(d)(1), Table 2.

§307.7, Site-Specific Uses and Criteria

Comment

EPA commented that in §307.7(b)(1)(A)(vi), an Enterococci criterion of 54 cfu/100 mL (geometric mean) is proposed for application to the primary contact recreation 2 use in inland high saline waters. EPA recommended that the proposed geometric mean Enterococci criterion for primary contact recreation 2 in inland high saline waters be revised to 30 or 35 cfu/100 mL. EPA also recommended the adoption of a statistical value threshold of either 110 or 130 cfu/100 mL Enterococci for primary contact recreational uses.

Response

The commission responds that the illness rate associated with the geometric mean criterion of 54 cfu/100 mL for primary contact recreation 2 for high saline inland water bodies is consistent with the illness rate associated with the commission's primary contact recreation 2 geometric mean criterion in freshwater, which was approved by EPA. The proposed geometric mean Enterococci criterion of 54 cfu/100 mL was derived using EPA's 1986 guidance, *Ambient Water Quality Criteria for Bacteria,* which is based on an accepted risk of illness of 10/1000, or 1%.

The commission has previously adopted single sample criteria for primary contact recreation 1 in freshwater, high saline inland water bodies, and saltwater, including the specified criterion of 130 cfu/100 mL Enterococci for primary contact recreation 1 in saltwater. Under 30 TAC §309.3(h), the commission applies the most stringent criterion, i.e., for primary contact recreation 1, for permitting purposes.

No changes were made in response to these comments.

§307.10, Appendices A - G

Appendix A, Site-specific Uses and Criteria for Classified Segments

Comment

EPA recommended that aquatic life uses be adopted for Segments 1006 and 1007 of the Houston Ship Channel. EPA noted that data have been collected that demonstrate an aquatic life use is justified. In accordance with this recommendation, EPA stated that the dissolved oxygen standards should be reevaluated. Increasing the dissolved oxygen standards from 1.0 mg/L to 2.0 mg/L for Segment 1007 and from 2.0 mg/L to 3.0 mg/L for Segment 1006 are recommended by EPA to protect the actual aquatic life uses. EPA commented that the adoption of uses and revised standards would allow a transition to a dissolved oxygen standard of 4.0 mg/L and aquatic life use of high for Segment 1005. EPA noted there are very few exceedances in Segments 1006 and 1007 in the 2020 Integrated Report and previous reports.

Response

The commission responds that at this time, no recent evaluation of these segments in the form of a UAA has been performed. The comment requesting the reevaluation of both segments is noted and may be considered by the commission for future triennial revisions of the TSWQS. No changes were made in response to this comment.

Comment

Round Rock expressed support of the addition of a footnote to Brushy Creek (Segment 1244) restricting the public water supply use designation to the portions of Brushy Creek within the contributing, recharge, and transition zones of the Edwards Aquifer. Round Rock noted certain water body characteristics, inadequate flows, no known public water supply uses, and lack of proximity to existing public water supply intakes and wells as support for the change.

Response

The commission acknowledges this comment.

Comment

Sierra Club, TCE, ET, ITL, TIRN, ES, CAPE, BCW, NWF, C/C Tribe, GEAA, IBCWA, EIP, and FBR commented that the removal of the public water supply use designation for a large portion of Brushy Creek (Segment 1244) is inappropriate because the removal of this use could make it easier for current or future permitted dischargers to degrade water quality.

Response

The commission responds that there are currently no public water supply intakes or wells under the influence of surface water in this section of Brushy Creek, as described in the footnote. The removal of the public water supply use designation for this section of Brushy Creek does not preclude the possible future use of this section as a public water supply. At such a time that a public water supply use was identified, the public water supply use designation would be placed on the applicable portion of Brushy Creek. No changes were made in response to this comment.

Comment

EPA recommended the adoption of an aquatic life use and corresponding dissolved oxygen criteria for Mid Pecan Bayou (Segment 1431) based on a completed UAA.

Response

The commission responds that it will review the UAA for possible inclusion in a future revision of the TSWQS.

Comment

CCMA expressed support for the removal of the footnote on Mid Cibolo Creek (Segment 1913) in Appendix A and requested that any future study of the watershed be performed with the effects of the Odo J. Riedel Regional Water Reclamation Plant discharge properly considered.

Response

The commission acknowledges this comment and notes it will evaluate site-specific information during any future studies of the watershed.

Comment

EPA commented that it has reviewed the Recreational UAA for San Miguel Creek (Segment 2108) and expressed support for the proposed revision to secondary contact recreation 1 for this water body pending review of any comments submitted during this public comment period and from earlier comment periods.

Response

The commission acknowledges this comment.

Comment

Sierra Club, TCE, ET, ITL, TIRN, ES, CAPE, BCW, NWF, C/C Tribe, GEAA, IBCWA, EIP, and FBR expressed opposition to the recreational use change for San Miguel Creek (Segment 2108) from primary contact recreation 1 to secondary contact recreation 1.

Response

The commission relied on information collected during the recreational UAA for San Miguel Creek to develop the site-specific secondary contact recreation 1 use. This reclassification is appropriate due to the presence of natural, ephemeral, intermittent, or low flow conditions or water levels that prevent attainment of the existing use in accordance with 40 CFR §131.10(g)(2). The average thalweg depth was 18 inches, and there were no substantial pools. Access to the creek was moderate to difficult and limited by private property fencing adjacent to public bridge crossings. No changes were made in response to this comment.

Appendix B, Sole-source Surface Drinking Water Supplies

Comment

EPA commented that it generally defers to TCEQ regarding the specific segments that should be included in Appendix B. However, EPA questioned the deletion of Granger Lake (Segment 1247) based on information from TCEQ's Drinking Water Watch database, which appears to indicate that Granger Lake may still be a sole-source drinking water supply. EPA also recommended the addition of Caldwell and Guadalupe counties to the new entry for San Marcos River (Segment 1808).

Response

The commission agrees that Granger Lake should not have been removed from the sole-source list. The commission also agrees that Caldwell and Guadalupe counties should be included in the San Marcos River entry. The §307.10(2), Appendix B entries for Granger Lake and the San Marcos River have been modified as recommended.

Appendix C, Segment Descriptions

Comment

CCMA expressed support of the reversion of the segment descriptions for Upper Cibolo Creek (Segment 1908), Mid Cibolo Creek (Segment 1913), and Lower Cibolo Creek (Segment 1902) back to the most recent EPA-approved descriptions included in the 2014 TSWQS. CCMA referred to its review of historic and current aerial photography and water quality data as the basis for its support of this change.

Response

The commission acknowledges this comment.

Appendix D, Site-specific Uses and Criteria for Unclassified Water Bodies

Comment

Sierra Club, TCE, ET, ITL, TIRN, ES, CAPE, BCW, NWF, C/C Tribe, GEAA, IBCWA, EIP, and FBR expressed opposition to the aquatic life use change on the portion of Buckners Creek (unclassified stream within the watershed of Segment 1402) that has an intermittent with pools flow regime. The commenters noted that TCEQ's downgrade from a high to intermediate aquatic life use is based on evidence that this portion of the stream is not flowing much of the year. Sierra Club, TCE, ET, ITL, TIRN, ES, CAPE, BCW, NWF, C/C Tribe, GEAA, IBCWA, EIP, and FBR commented that intermittence should not dictate the level of aquatic life use since intermittent parts of a stream do not perform a less important role in aquatic life development.

Response

The commission responds that a two-year UAA was used to reevaluate standards for Buckners Creek. Biological data collected during the UAA indicated that an intermediate aquatic life use is attainable in the intermittent with pools portion of Buckners Creek and is the appropriate aquatic life use. Federal regulations at 40 CFR §131.10(g) list several reasons for a change of use in a water body, which includes natural, ephemeral, intermittent, or low flow conditions or water levels that prevent the attainment of the existing use. Subcategories of aquatic life use do not indicate the relative importance of the aquatic life or stream reach, but rather the natural variability of aquatic communities. No changes were made in response to this comment.

Appendix E, Site-specific Toxic Criteria

Comment

EPA noted that during the 2018 TSWQS revision cycle, revisions were adopted in §307.6(c) to clarify that BLM results can be used in the development of site-specific numeric criteria, rather than a multiplier to be used with the statewide freshwater copper criteria. EPA commented that it may be useful to add similar clarification in the second and fifth sentences in the introductory paragraph of Appendix E. EPA recommended inserting the phrase "or site-specific criteria" near the references to "site-specific adjustment factor(s)" in both sentences.

Response

The commission agrees with this comment, and the phrase "site-specific criteria" has been added to the second and fifth sentences of the introductory paragraph of Appendix E.

Comment

EPA recommended revising footnote "3" to footnote "4" for both existing entries for Segment 0901. EPA noted that these two water-effect ratio (WER) studies were conducted by Enterprise Products Operating, LLC (TPDES Permit No. WQ0002940000), and the WER results are applicable to the area near the outfall as opposed to the entire water body.

Response

The commission agrees with this comment, and the footnotes have been changed from "3" to "4" as recommended in Appendix E.

Comment

EPA commented that, in accordance with §307.6(c)(9)-(10), EPA has previously approved site-specific criteria based on WER studies or BLM results for the following water bodies: unnamed tributary to Smith Creek (within the watershed of Segment 0202), Entergy Canal and tidal marshes (within the watershed of Segment 0601), Taylor Bayou Tidal (within the watershed of Segment 0702), Seals Gully (within the watershed of Segment 1009), Scott Bay (Segment 2429), Mustang Bayou (two studies within the watershed of Segment 2432), and Little Boggy Creek (within the watershed of Segment 2441).

Response

The commission acknowledges this comment and notes that those site-specific criteria were included in the revisions to Appendix E.

Comment

EPA commented that the technical review of the following two studies is complete, and EPA will take action under CWA, §303(c) on the site-specific criteria pending completion of the 2022 revision of the TSWQS: Hurricane Creek (within the watershed of Segment 0604) and Floyd Branch (within the watershed of Segment 0827).

Response

The commission acknowledges this comment and notes that those site-specific criteria were included in the revisions to Appendix E.

Comment

EPA commented that the technical review of several additional studies for site-specific copper criteria have been completed, and if TCEQ's public comment period and EPA's approval under CWA, §303(c) are completed through the TPDES permitting process prior to the adoption of the 2022 TSWQS, it may be appropriate to include one or more of the following site-specific criteria in Appendix E of the adopted 2022 TSWQS: Spring Gully (within the watershed of Segment 1006), tributary to Houston Ship Channel (within the watershed of Segment 1007), and tributary to Chocolate Bayou above Tidal (within the watershed of Segment 1108).

Response

The commission acknowledges this comment, and the above referenced studies will be added to Appendix E during the next revision of the TSWQS after receiving final EPA approval through the TPDES permitting process.

Appendix G, Site-specific Recreational Uses and Criteria for Unclassified Water Bodies

Comment

EPA commented that it has reviewed the recreational UAA for South Lilly Creek, which is an unclassified stream within the watershed of Segment 0409. EPA expressed support for the proposed revision to secondary contact recreation 1 for this water body pending review of any comments submitted during this public comment period and from earlier informal comment periods.

Sierra Club, TCE, ET, ITL, TIRN, ES, CAPE, BCW, NWF, C/C Tribe, GEAA, IBCWA, EIP, and FBR expressed opposition to the recreational use change for South Lilly Creek from primary contact recreation 1 to secondary contact recreation 1.

Response

The commission relied on information collected during the recreational UAA for South Lilly Creek to develop the site-specific contact recreation use for this revision. This reclassification is appropriate due to natural, ephemeral, intermittent, or low flow conditions or water levels that prevent the attainment of the existing recreational use in accordance with 40 CFR §131.10(g)(2). The average thalweg depth was 19 inches, and there were no substantial pools. Access to the creek was difficult and limited due to private property. Therefore, the designation of secondary contact recreation 1 is appropriate. No changes were made in response to these comments.

Comment

EPA expressed support for the proposed revision to split Bullhead Bayou into two separate reaches as tributaries of Segment 1202. However, EPA recommended clarification of the eastern boundary of Bullhead Bayou East by revising the description to read "to the Sweetwater Golf Course near Commonwealth Blvd in Fort Bend County."

Response

The commission agrees with this comment, and the description has been revised to the suggested edit for clarification.

Statutory Authority

The amendments are adopted under the authority of the Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; TWC, §5.105, which establishes the commission's authority to set policy by rule; TWC, §5.120, which requires the commission to administer the law so as to promote the conservation and protection of the quality of the state's environment and natural resources; TWC, §26.011, which authorizes the commission to establish the level of quality to be maintained in and control the quality of water in the state; TWC, §26.0135, which authorizes the commission to monitor and assess the water quality of each watershed and river basin in the state; TWC, §26.023, which authorizes the commission to set water quality standards for water in the state by rule; TWC, §26.027, which authorizes the commission to issue permits; TWC, §26.121, which provides the commission's authority to prohibit unauthorized discharges; and 33 USC, §1313, which requires states to adopt water quality standards and review them at least once every three years.

The adopted amendments implement TWC, §26.023.

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 September 9, 2022.

TRD-202203625
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: September 29, 2022
Proposal publication date: March 25, 2022
For further information, please call: (512) 239-2678

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER A. STATEWIDE HUNTING PROCLAMATION

DIVISION 2. OPEN SEASONS AND BAG LIMITS

31 TAC §65.46

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 25, 2022 adopted an amendment to 31 TAC §65.46, concerning Squirrel: Open Seasons, Bag and Possession Limits, without changes to the proposed text as published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3928). The amendment re-establishes season dates and bag limits for squirrels in certain East Texas counties to correct an administrative error.

In 2021 the department promulgated regulations that established an open season for squirrel in all counties that at that time were closed to squirrel hunting. Due to an administrative error, the rule in its entirety was not reflected in TAC and the season dates and bag limits for certain counties were omitted; therefore, rule action was necessary to ensure that the intended squirrel harvest regulations are reinstated.

The department received no comments opposing adoption of the rule as proposed.

The department received seven comments supporting adoption of the rule as proposed.

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

§65.46. Squirrel: Open Seasons, Bag and Possession Limits.

(a) In Anderson, Angelina, Bowie, Camp, Cass, Chambers, Cherokee, Delta, Fannin, Franklin, Freestone, Galveston, Gregg, Hardin, Harris, Harrison, Henderson, Hopkins, Houston, Hunt, Jasper, Jefferson, Lamar, Leon, Liberty, Limestone, Marion, Montgomery, Morris, Nacogdoches, Navarro, Newton, Orange, Panola, Polk, Rains, Red River, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Trinity, Tyler, Upshur, Van Zandt, Walker, and Wood Counties, there is a general open season for squirrel.

(1) Open season: May 1-May 31 and October 1 through the last Sunday in February.

(2) Daily bag limit: 10 squirrels.

(3) Possession limit: 20 squirrels.

(b) In all other counties, there is an open season from September 1 through August 31, during which there is no bag limit.

(c) In the counties listed in subsection (a) of this section, there shall be a special youth-only general hunting season during which only licensed hunters 16 years of age or younger may hunt.

(1) open season: the Saturday and Sunday immediately preceding October 1.

(2) bag and possession limits: as specified in subsection (a) of 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.

Filed with the Office of the Secretary of State on September 6, 2022.

TRD-202203498
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: September 26, 2022
Proposal publication date: July 8, 2022
For further information, please call: (512) 389-4775

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SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 1. CHRONIC WASTING DISEASE (CWD)

31 TAC §65.81, §65.82

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 25, 2022 adopted amendments to 31 TAC §65.81 and §65.82, concerning Disease Detection and Response. Section 65.81, concerning Containment Zones; Restrictions, and §65.82, concerning Surveillance Zones; Restrictions, are adopted with changes to the proposed text as published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3929). These rules will be republished.

The change to §65.81 replaces a semicolon with a period at the end of the list of coordinates in paragraph (1)(C).

The change to §65.82 reduces the size of Surveillance Zone 8 as proposed and implements a two-year "sunset" date at which time the provisions of §65.82(1)(H) would cease effect. Both changes were in response to public comment.

The amendments establish one new containment zone (CZ 6), expand existing CZ 3, create a new surveillance zone (SZ 8), and modify existing SZ 5 to either implement or improve surveillance efforts as part of the agency's effort to manage chronic wasting disease (CWD).

Chronic wasting disease (CWD) is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (referred to collectively as susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as

"Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

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. What is known is that CWD is invariably fatal to certain species of cervids, and it is transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion-dollar ranching, hunting, wildlife management, and real estate economies could be significant.

The department has engaged in several rulemakings over the years to address the threat posed by CWD, including rules to designate a system of zones in areas where CWD is confirmed, within which the possession and movement of live deer under department permits is restricted and harvested deer are required to be presented at check stations to be tested for CWD.

A CZ is a specific location in which CWD has been detected or the department has determined, using the best available science and data, that CWD detection is probable. Designation of a CZ imposes mandatory carcass movement restrictions, and if the department imposes mandatory check stations, all deer harvested within a CZ must be presented at a check station unless otherwise authorized by the department in writing.

The amendment to §65.81, concerning Containment Zones; Restrictions, alters the dimensions of current CZ 3 in Medina County in response to the new detection of CWD in additional deer within the current CZ. On February 3, 2022, the department received confirmation that a free-ranging 5.5-year-old female white-tailed deer within the current CZ had tested positive for CWD. The action enlarges the current CZ in order to comport the CZ with existing parameters for containment zones and is necessary to provide for additional surveillance within the recalculated parameters.

On February 26, 2020, the department received confirmation that a 5.5-year-old female white-tailed deer in a deer breeding facility in Kimble County had tested positive for CWD. Two white-tailed deer harvested on a release site associated with the index facility subsequently tested positive (January 12, 2022 and February 18, 2022, respectively). The amendment establishes new CZ 6 in response to these discoveries.

The amendment to §65.82, concerning Surveillance Zones; Restrictions,

enlarges SZ 5 in Kimble County to include the city of Junction, which would allow hunters to transport carcasses to processors and taxidermists in Junction without carcass movement restrictions.

The amendment also creates new SZ 8 in Duval County in response to the detection of CWD in a deer breeding facility. A SZ is a department-defined geographic area in this state within which the department has determined, using the best available science and data, that the presence of CWD could reasonably be expected.

Within CZs and SZs, the movement of live deer is restricted and if the department has established mandatory check stations, the presentation of harvested deer at a department check stations is required unless otherwise authorized in writing by the department. In addition, deer carcass movement restrictions set forth in §65.88 of Subchapter B, Division 1 apply. The boundaries of the CZ and SZs have been tailored to as much as possible follow recognizable features such as roadways, water bodies, county boundaries, transmission lines, and the department notes that any designation of a CZ or SZ is always accompanied by a robust public awareness effort.

The department received 587 comments opposing adoption of all or part of the proposed amendments. Of those comments, 231 provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow. The department notes that many comments were thematically related and has therefore synthesized the comments by category and responded accordingly; therefore, the total number of responses does not equal the total number of comments.

Sixty-five commenters opposed adoption and stated in various ways that the SZ in Duval County is too large and/or disproportionately large given the number and location of CWD detections. (Additionally, seven commenters opposed adoption and stated that the "Containment Zone" in Duval County is too large or unnecessary. The department responds that the rules do not create a containment zone in Duval County; however, if the commenters are confusing that term with "Surveillance Zone," the department's response to the following comment is apropos.) The department disagrees with the comments and responds that among the many misconceptions regarding epidemiological investigations are the ideas that concern is warranted only when a disease becomes widespread and that disease spreads in a linear fashion, neither of which is true. Where CWD exists, it can be transmitted; therefore, the detection of CWD in a single deer, anywhere, is a cause of concern. Because of the prolonged incubation period and period of infectivity, as well as the propensity of humans to transport susceptible species long distances, it is possible for CWD to exist on the landscape long before it is detected and at significant distances from the index case. The scientific dictates of epidemiology therefore should be employed maximally to arrive at a definitive conclusion as early as possible. Nonetheless, the boundaries of the SZ as proposed were selected in order to allow hunters to transport carcasses and heads without the imposition of carcass movement restrictions to mandatory check stations in Freer and Alice. As a result of public comment, the commission instead adopted a smaller, yet epidemiologically acceptable surveillance zone that includes roadways and rights-of-way to the cities of Freer and Alice.

Fifty commenters opposed adoption and stated in various ways that because all known CWD positives in Duval County were in deer pens on a high-fenced property, either that property and adjoining properties should be the SZ or the pens should be a containment zone and the surveillance zone should be the surrounding high-fenced property. The department disagrees with the comments and responds that, as noted in a previous response, where CWD exists it can be transmitted; therefore, the detection of CWD in a single deer, anywhere, is a cause of concern. Because of the prolonged incubation period and period of infectivity, as well as the propensity of humans to transport susceptible species long distances (thus spreading disease), it is possible for CWD to exist on the landscape long before it is detected and at significant distances from the index case. The scientific dictates of epidemiology therefore should be maximally employed to arrive at a definitive conclusion as early as possible. Therefore, and especially in light of the uncooperative behavior associated with the index facility (elaborated in a following response) that muddies the picture with respect to certainty that all deer within

the deer pens have been accounted for, it would be imprudent to constrict surveillance efforts to such a small geographic extent. No changes were made as a result of the comments.

Forty-five commenters opposed adoption and stated in various ways that the rules constitute governmental overreach and/or violate private property rights. The department disagrees with the comments and responds that the rules were lawfully promulgated under the authority of Parks and Wildlife Code, Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation; Subchapter E, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds, urban white-tailed deer removal, and trapping and transporting surplus white-tailed deer; Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; Subchapters R and R-1, which authorize the commission to establish the conditions of a deer management permit for white-tailed and mule deer, respectively; 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 department further responds that the rules regulate the use of a public resource by individual licensees and do not affect any property right of any person. No changes were made as a result of the comments.

Thirty-six commenters opposed adoption of the proposed SZ in Duval County and stated that if detection of CWD "was truly an emergency," the department "would have immediately removed that deer from the property and implemented some sort of testing on that property last year. None of which was done." The department disagrees with the comments and responds that immediately upon notification of a "suspected" CWD test result, the property from which the test result was obtained is immediately placed under quarantine and an epidemiological investigation is begun, up to and including complete depopulation (if the positive occurred in a deer breeding facility). In the case of the index facility in Duval County, the course of affairs was complicated by an uncooperative permit holder who euthanized, without department authorization or notification, a large but unknown number of deer and interred the remains on the property. The department was forced to obtain a search warrant for the premises, including for CWD samples the permit holder claimed to have collected but initially refused to provide to the department, which resulted in the disinterment and attempted identification of an indeterminate number of deer in an advanced state of decomposition. The situation was further complicated by poor recordkeeping as to the number and unique identities of deer the permittee claimed to have euthanized, as well as concerns regarding whether, and if so, how many deer were unaccounted for with respect to the reported inventory. In addition, deer transferred from the CWD-positive breeding facility to two DMP (Deer Management Permit) pens located within the release site contiguous with the breeding facility were euthanized by the department and tested. The department can confidently state that every possible action to respond to the detection was taken. No changes were made as a result of the comments.

Twenty-one commenters opposed adoption and stated that the rules would result in negative impacts to property values. The department disagrees with the comments and responds that since the designation of the first CZ and SZ in 2013, it is aware of no credible, factual evidence, data, or study to support the assertion that zone designations cause declines in real estate values.

Eighteen commenters opposed adoption and stated, variously, that there is no science behind the rules, no data, inconclusive data, and similar accusations of arbitrariness. The department disagrees with the comments and responds that not only are the rules as adopted scientifically defensible, they represent, in terms of epidemiological efficacy, the minimally acceptable standard for effective disease management. No changes were made as a result of the comments.

Thirteen commenters opposed adoption and stated that the rules are a waste of taxpayer money and/or resources. The department disagrees with the comments and responds that aside from the fact that the department's CWD management efforts are funded primarily by hunting license fees, those efforts are not a waste because they function to protect a public resource and the economies that depend upon on it. No changes were made as a result of the comments.

Twelve commenters opposed adoption and stated that adequate disease surveillance can be achieved by voluntary testing. The department disagrees with the comment and responds that based on previous attempts at voluntary testing strategies (including in Duval County during the 2021-2022 hunting season), the most expeditious approach to providing confidence that CWD does not exist in the free-ranging deer populations in that area is with mandatory testing requirements. No changes were made as a result of the comments.

Seven commenters opposed adoption because the rules do not specify a date or circumstance under which surveillance zones are terminated. The department disagrees that such assurances are useful and responds that the purpose of a surveillance zone is to provide an epidemiologically valid assessment of the presence or absence of CWD in a location where the department has determined that detection could be expected, i.e., the area surrounding a location where the disease has been confirmed to exist. That effort is inherently complex, consisting of the interrelated factors of duration, intensity, and distribution of testing effort in the context of spatial and geographic discontinuities, the incubation time of CWD, and other considerations, which together make the determination of a date at which a surveillance zone will be lifted a meaningless guess. It is or should be axiomatic, however, that a surveillance zone would be rescinded once the department has determined that CWD is not present. Nevertheless, in response to public comment, the rule as adopted provides for a two-year sunset date upon which the SZ in Duval County will be reconsidered by the commission and either continued or discontinued based epidemiological data collected over that time period.

Seven commenters opposed adoption and stated in various ways that the creation of the SZ in Duval County will result in economic burden. The department disagrees with the comments and responds that the rules require harvested deer to be presented or made available to the department for CWD testing, which could result in inconvenience but is not an economic burden, especially when compared to the substantial voluntary expenses associated with deer hunting and the existential threat to deer hunting posed by CWD. No changes were made as a result of the comments.

Six commenters opposed adoption and stated that designation of a surveillance zone will hurt deer hunting and one commenter

opposed adoption and stated that hunters will be less willing or unwilling to book hunts in such areas. The department disagrees with the comments and responds that hunter avoidance is likely less a reaction to zone designation than to the knowledge that CWD is present in an area. No changes were made as a result of the comments.

Five commenters opposed adoption and stated that CWD cannot be stopped and has not killed human beings. The department disagrees that CWD cannot be stopped and responds that effective control efforts can function to prevent the spread of CWD beyond the locations where it is detected. The department also responds that although there is no indication that CWD can spread to human populations, the threat to deer populations alone is sufficient reason to engage in vigorous efforts to combat the disease. No changes were made as a result of the comments.

Five commenters opposed adoption and stated that deer breeding and the artificial movement of deer 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 breeders permit to any qualified person and that other artificial movement of deer, except for movement pursuant to a wildlife rehabilitation permit, has been temporarily suspended. No changes were made as a result of the comments.

Four commenters opposed adoption and stated that the rules will hurt small businesses. The department disagrees with the comments and responds that the rules regulate the behavior of persons who harvest a public resource and do not directly or indirectly regulate small businesses. No changes were made as a result of the comments.

Four commenters opposed adoption and stated that CWD is a political disease. The department disagrees with the comments and responds that the threat of CWD to deer populations and the economies that depend upon them is not a political issue or the result of a political orientation. No changes were made as a result of the comments.

Four commenters opposed adoption and stated that the prevalence of high fences in Duval County means it is impossible for deer to range or wander very far, which greatly reduces the chances that CWD has been spread from the index facility. The department disagrees with the comment and responds that CWD is known to be transmissible through fencing. In addition, the idea that high fences are "deer-proof" is a popular, but erroneous, misconception. In short, CWD is spread by one animal to another animal, either directly or indirectly, and therefore one damaged fence, one open gate, or one animal physically touching another animal through a fence is sufficient opportunity for the disease to be spread. No changes were made as a result of the comments.

Four commenters opposed adoption and stated that the department conducted no public outreach efforts. The department disagrees with the comments and responds that not only has it for two decades conducted a robust effort to engage and inform the public about CWD, regional staff in areas where CWD is discovered attempt to contact as many landowners and land managers as possible in an effort to notify those persons that CWD has been discovered and department management actions are likely. The department also responds that because many landowners are absentee landowners, it is difficult to notify every landowner that might be affected. Additionally, the department publishes proposed rules in the *Texas Register* for a minimum of 30 days to receive public comment, simultaneously publishes those rules on the department's website for the same purpose, and issues numerous press releases to publicize anticipated CWD management actions, and provides contact information for concerned citizens. No changes were made as a result of the comments.

Four commenters opposed adoption and stated that the rules are an overreaction to "a few deer behind a high fence." The department disagrees with the comment and responds that the rules are an appropriate, measured, reasonable response to detect and prevent the spread of a serious disease. No changes were made as a result of the comments.

Four commenters opposed adoption and stated that the rules "won't accomplish anything." The department disagrees with the comments and responds that the rules will function to detect the presence of CWD if it exists beyond the index site, which will allow the department to respond to and contain further spread.

Three commenters opposed adoption and stated that CWD is not a real threat. The department disagrees with the comments and responds that CWD is in fact a very real threat, as it is a neurodegenerative disease that is fatal, persistent, and incurable. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that the rules do not provide a way for landowners within a surveillance zone to independently conduct testing efforts that would allow a property to be excluded from the surveillance zone and the applicability of the rules. The department agrees with the comment but responds that because a surveillance zone is an *area* where the department believes CWD detection could be expected, based on the geographical proximity to a location where a positive has been confirmed, it is difficult for a given tract to be epidemiologically excluded given the multi-year incubation time of CWD, the distribution of potential hosts on the landscape, and the movement of potential hosts. Independent testing effort in such a scenario would have to be conducted until all other properties in the zone were determined to be free of CWD as well. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that by the department's own admission little is known about CWD, yet the department "arbitrarily tramples landowner's rights." The department disagrees with the comments and responds that the rules as adopted are not arbitrary and no person's rights are being trampled, irrespective of the state of scientific knowledge regarding CWD. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that there is no proof the department's approach will work. The department disagrees with the comment and responds that there is no question that intensive sampling to detect the disease is absolutely essential to efforts to contain it and prevent it from spreading. No changes were made as a result of the comments.

Two commenters opposed adoption and stated the rules should not apply to properties that do not transfer deer. The department disagrees with the comment and responds that, for reasons stated in a previous response to comments regarding the size of the SZ, intentional movement of deer to or from any given property is irrelevant if the index facility is epidemiologically proximal. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that it impossible for every harvested deer to be taken to a check station. The department disagrees with the comment and responds that it is not difficult for any person to transport a head to a check station

or to make arrangements for samples to be taken and preserved in situ. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that CWD is a non-issue. The department disagrees with the comments and responds that CWD, as a fatal, transmissible, and incurable disease that threatens cervid populations, is an issue. No changes were made as a result of the comments.

Two commenters opposed adoption on the basis that "lack of public notice and input and available data and the need for a CWD zone in response to a single deer testing positive behind two game fences." The commenter further stated that zone's magnitude will demand multiple test sites and increased staffing, resulting in unnecessary expenditures for an area that has no free ranging positive deer. The department disagrees with the comment and responds that the proposed rules were duly noticed in complete compliance with the applicable provisions of the Texas Administrative Procedure Act, as well as published on the department website 30 days before the August 25, 2022, commission meeting, and were publicized by press releases and employee outreach. The department further responds, as noted earlier in this preamble, that the number of CWD-positive deer is irrelevant once CWD has been detected in a single deer and that high fences, despite conservative wisdom, are not deer-proof. The department also responds that the discharge of the department's duties under the rules will be undertaken by existing staff and budget dedicated to CWD management. Finally, there is no scientific basis for a declaration that CWD is not present in free-ranging populations in Duval County; the rules are being promulgated precisely for that reason - to determine whether CWD has escaped from the index site. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rules will result in decreased recreational value of land for families. The department disagrees with the comment and responds that the rules do not interfere in any way with the ability of a family to enjoy recreational activities. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules are unnecessary because CWD is scrapie. The department disagrees with the comment and responds that CWD is a TSE disease that affects cervid species and scrapie is a TSE disease affecting sheep. No changes were made as a result of the comment.

One commenter opposed adoption and stated that landowners should not have to pay for CWD testing. The department agrees with the comment and responds that testing costs of hunter-harvested deer in an SZ or CZ are borne by the department. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are "too many unknowns and no plan of action." The department disagrees with the comment and responds that the designation of surveillance zones and the testing requirements thereunder are, in fact, a plan, and are necessary precisely because the status of the disease on the landscape, among other things, is unknown. No changes were made as a result of the comment.

One commenter opposed adoption and stated that because deer densities are so high in Duval County, only 50 percent of harvested deer should be required to be tested. The department disagrees with the comment and responds that the fastest and most effective way to determine whether CWD has spread from the index facility is to test 100 percent of hunter-harvested deer within the SZ. Additionally, 50 percent testing would not be epidemiologically sufficient to determine disease prevalence and in any case would be problematic because the total harvest is unknown until the last day of legal hunting, making the results of the calculation, and therefore an assessment of compliance, unknown until the end of the season. No changes were made as a result of the comment.

One commenter opposed adoption and stated that testing of 100 percent of mortalities is unreasonable but 20 percent is reasonable. The department disagrees with the comment and responds that the fastest and most effective way to determine whether CWD has spread from the index facility is to test 100 percent of hunter-harvested deer within the SZ. Additionally, a 20 percent testing rate would be of little to no epidemiological value. No changes were made as a result of the comment.

One commenter opposed adoption and stated that tissues will deteriorate if it is too cold or too hot. The department disagrees with the comment and responds that tissues can be stored in refrigerated environments pending stabilization and testing. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules constitute a governmental taking of private property. The department disagrees that the rules as adopted constitute a taking, as no component of the rule results is a governmental seizure of private property or a restriction of the use of private property. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules are an abuse of authority. The department disagrees with the comment and responds that the rules were validly promulgated under statutory authorities delegated to the commission by the Texas Legislature and which are exhaustively enumerated in several places elsewhere in this preamble. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules will make it harder to hunt in Texas and another commenter stated that the rules will put an end to hunting in Texas. The department disagrees with the comments and responds that to the contrary, CWD is an existential threat to deer populations that hunting depends on and the failure of the department to discharge its statutory duty to protect that resource would constitute dereliction. No changes were made as a result of the comments.

One commenter opposed adoption and stated the rules "target law-abiding ranches" and another commenter stated that the rules are an "attack on landowners." The department disagrees with the comments and responds that the rules "target" no one and "attack" no one; rather, they are a completely justified execution of the department's statutory duty to protect, manage, and conserve public wildlife resources. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there is no cure for CWD so there should be no required testing. The department disagrees with the comment and responds that it does not follow that the absence of a cure obviates the need to determine the extent of the disease in places where it is discovered. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules are a money grab by the department. The department disagrees with the comment and responds that CWD management efforts generate no revenue for the department. No changes were made as a result of the comment.

One commenter opposed adoption and stated that rules will hurt the department's MLD program. The department disagrees with the comment and responds that the MLD program is a voluntary habitat management program unrelated to disease management efforts and there is no reason to assume cooperators will leave the program as a result of the rules, although that is the prerogative of any cooperator and the department respects that decision. No changes were made as a result of the comment.

One commenter opposed adoption and stated that CWD is not real. The department disagrees with the comment and responds that CWD does exist and is real.

One commenter opposed adoption and stated that the department should use common sense and talk to business owners about how to avoid waste of time and resources. The department disagrees that waste of time and resources is occurring and that principles of business management are useful in developing and executing disease management strategies. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department is "shutting down law-abiding ranches to cater to wealthy large ranch owners/ large landowners using lobbyists to put competition out of business." The department disagrees with the comment and responds that it is patently and demonstrably false. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should "involve expertise such as DVMs who have spent their lives in scholarly research of animal science and forensic studies associated with them." The department agrees with the comment and responds that department responses to CWD for decades have relied upon the expertise of department staff, the staff of TAHC, and numerous working groups organized by the department, which contain numerous veterinarians, epidemiologists, and other experts on wildlife disease management. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules "punish everyone for a few ranches." The department disagrees with the comment and responds that the rules are not intended to be punitive; unfortunately, when CWD is detected anywhere the department response necessarily introduces elements of disruption to normal practices in the area where a zone is created. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules are a department power grab. The department disagrees with the comment and responds that the rules were adopted pursuant to existing

No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules are being imposed "before any epidemiological study on the source ranch has been conducted." The commenter further stated that test results from the index site have not been provided to the public and that the commenter has voluntarily tested 25% of harvested deer on the commenter's property for six out of the past seven years. The department disagrees that no epidemiological investigation occurred prior to the promulgation of the rules and responds that immediately upon notification of the first positive at the index facility an epidemiological investigation was initiated and continues. The department further responds that the test results are a public record, that test results are not withheld from the public, and that while the department applauds the commenter's efforts to contribute to the overall sampling effort, a 25 percent sampling rate is epidemiologically insufficient for purposes of establishing confidence that CWD is not present. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department has "mishandled the management of native deer by allowing mixing of pen raised deer and in effect has propagated the spread of CWD to native deer." 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 breeders permit to any qualified person and that despite strenuous long-term efforts by the department to address the disease threat within and from deer breeding facilities, the regulated community unfortunately continues to be a source of CWD detections. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "scientist tend to not accept that they don't understand everything about this disease" and continued to state that there is "no solid evidence to back up why these extreme measure should be taken." The department disagrees with the comment and responds that to the contrary, the department has repeatedly emphasized that scientific understanding of CWD is in a state of evolution and that there are many unknowns, which is precisely why the department errs on the side of caution. The department disagrees that the rules are "extreme measures," as they require that harvested deer be presented or made available for disease testing, which the department does not consider to be onerous in light of the threat posed by what is thus far known about CWD. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department "has not completed the necessary testing of the source site to condemn over 300,000 acres of privately held property. Other options are available to get adequate sampling from the immediate area without a surveillance zone." The department disagrees that it is necessary to conclude testing activities at the index site as a precondition for rule action to contain the spread of CWD, that no property has been condemned, and that "other options" (i.e., voluntary testing) have already been attempted with unsatisfactory results. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "the plan only increases the perceived problem and increases the desire of the TPWD agenda to ruin the Texas deer industry. Spending time and money on the cure to eliminate the issue would be a far better service to the people of the State of Texas." To the extent that the comment can be understood, the department disagrees with the comment and responds that CWD is a real problem, not a perceived problem, that there is no "agenda" to "ruin" whatever is meant by the term "deer industry," and that until a cure is available, which is very much an open question, the department believes it must continue proactive efforts to detect and contain CWD. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department "will never be able to eradicate ever [~~sic~~] deer with CWD. TPWD should kill the positives and requires breeders to live test all other captive deer." The department disagrees with the comment and responds that killing positive deer is not, in and of itself, a useful epidemiological goal (because it is a post-facto action that does not address transmission and spread of CWD), and that deer breeders are subject to a separate regulatory apparatus that specifies testing requirements necessary to be authorized to move deer. The SZ in Duval County is necessary because (1) deer were released from the index facility, (2) deer re-

ported to be in the deer breeding facility could not be accounted for, and (3) the disease status of the totality of the facility inventory is unknown because of acts committed by the permit holder. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules are "not tailored to the particular facts of the situation." The department disagrees with the comment and responds that the rules are specifically tailored to each location where they are imposed. No changes were made as a result of the comment.

One commenter opposed adoption and stated an unwillingness to take harvested deer to a check station, adding, "if the state would like to test the deer, then they can drive to my ranch and I can meet them at the front gate and they can take the head." The commenter also stated that the department should "focus on those who are importing deer on to [sic their property." The department disagrees with the comment and responds the testing requirements imposed by the rules apply to the person who kills the deer, not the landowner (unless it is the landowner who killed the deer) and that the department will work with landowners to lessen inconvenience, such as training ranch personnel or hunters to be certified tissue collectors (so samples can be taken in situ) and in some cases going to a location to retrieve large numbers of tissue samples. The department also responds that the only lawful method of human-induced deer movement at the current time, other than pursuant to a wildlife rehabilitation permit, is by transfer from or to a deer breeder, which can only occur if certain testing requirements have been met. And, finally, the department must caution against refusing to comply with the rules as adopted, which is an offense. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be no CWD management regulations other than the imposition of carcass movement restrictions within five miles of any location where CWD has been detected. The department disagrees with the comment and responds that any responsible disease-management strategy must employ a surveillance component in order to determine the prevalence of the disease. No changes were made as a result of the comment.

One commenter opposed adoption and stated that he no longer possesses a deer breeder permit or provides commercial hunting opportunity because "TPWD have become a woke to the political idealogical [sic] pressure from a few well off low fence ranchers who sit on the board and are part of a small group of anti-deer breeding fellows." The department neither agrees nor disagrees with the comment and responds that the rules in question affect persons who take deer under a hunting license but do not affect deer breeders authorized to transfer deer or landowners. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department is using CWD to destroy deer breeding. The department disagrees with the comment and responds that the rules in question do not affect deer breeders authorized to transfer deer, nor are they an attempt to destroy deer breeding. No changes were made as a result of the comment.

One commenter opposed adoption and stated, using an obscenity that will not be repeated here, that deer breeders are over-regulated and the department should be "looking for a cure instead of killing innocent deer that do not have the disease." The department disagrees that the rules as adopted affect deer breeders authorized to transfer deer or that the rules require deer to be killed. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules amount to harassment of hunters and landowners. The department disagrees with the comment and responds that the rules are a scientifically valid disease-management protocol, which for some might be inconvenient but in no instances amount to harassment. No changes were made as a result of the comment.

One commenter opposed adoption and stated that containment zones and surveillance zones do not help mitigate the spread of CWD, which is a naturally occurring disease. The department disagrees with the comment and responds it can confidently state that CWD would be much more prevalent in the absence of management strategies such as surveillance and containment zones. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should use its resources to "work directly with cervid producers to create durable and invaluable genetic lines that are CWD resistant." The department disagrees with the comment and responds that it is not germane to the subject or intent of the rulemaking. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposed rule did not explain the consequences to landowners in the event that CWD is detected on a property. The department agrees with the commenter and responds that the rules as proposed contemplate only the creation of zones in those areas where CWD has already been detected; however, as noted earlier in this preamble, the department has conducted a robust CWD-awareness campaign, including contact information of department personnel, that can be utilized by interested persons to gain an understanding as to possible courses of action if additional CWD detections occur. No changes were made as a result of the comment. One commenter opposed adoption and stated that there is no reason to alter SZ 5 because there have been zero positives in that zone since the discovery of CWD in breeding facility. The department disagrees with the comment and responds that, as stated in the preamble of the proposed rule, the alteration of SZ 5 is intended to incorporate additional processing facilities so that hunters can lawfully transport harvested deer to those processors. Additionally, CWD was detected in two white-tailed deer outside of the CWD-positive deer breeding facility during the 2021-22 hunting season. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there is no longer any need for CZs because deer breeders already test 100 percent of mortalities and 100 percent of deer that are transferred. The department disagrees that the rules as adopted affect any deer breeder that is authorized to transfer deer. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department has "historically focused on breeders as opposed to native breeding herds," which is "fiscally irresponsible" and "further exhibits their lack of leadership ability & incompetence in any leadership roll [sic] whatsoever." The department disagrees with the comment and responds that the department's CWD management efforts are science-driven, developed by qualified personnel, and have not "historically focused on deer breeders," but on locations where CWD has been detected, which happens to predominantly involve deer breeding facilities. The department further responds that allegations of fiscal irresponsibility should be directed to appropriate state officials, such as the State Audi-

tor's Office or the Attorney General. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules will result in negative impacts to hunter recruitment. The commenter further stated that the department should "harness the MLD permit program to enhance testing in every area of the state" by means of a "first 15" approach in which MLD cooperators would be required to submit the first 15 deer harvested for testing. The department disagrees with the comment and responds that the rules are a response to an existing detection of CWD that requires heightened surveillance, but in any case, mandatory testing of free-ranging deer (including deer on MLD properties) elsewhere is unnecessary because the department's statewide volunteer sampling effort across the state by individual landowners and hunters is already efficacious for purposes of determining disease prevalence on the landscape, as opposed to efforts within deer breeding facilities, where the predominance of CWD positives occur. 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 from the spread of CWD in free-ranging populations. A deer in a natural population lives and dies within a certain geographical area, whereas breeder deer can and are moved many dozens or even hundreds of miles between facilities. In each facility where they are introduced they come into contact with other deer, some or all of which may have been in other facilities and sometimes, multiple facilities; this magnifies and increases the chances of disease transmission. The department also responds that the effect of the rules on hunter recruitment is expected to be asymptotically minute, if it occurs at all, which is extremely doubtful. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "The disease has been around far before we have tested for it. It (CWD) is already in the area with the larger population of free ranging deer. Issue more doe tags in those counties and remove a larger portion of deer than usual. Test those free ranging deer and MLD permit holders in similar fashion you test deer breeders. I'm sure the statistics will prove the free ranging deer show much more prevalence." The department disagrees with the comment and responds, as noted in an earlier response, that existing voluntary sampling is already epidemiologically sufficient for determining CWD prevalence in free-ranging herds elsewhere. The department also notes that CWD has been detected far more frequently in captive herds. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "arbitrary decisions for destruction of animals is ridiculous" and the rules are "a huge financial burden on ranchers in the already covered areas." The department disagrees with the comment and responds that the rules do not require the "destruction of animals" and impose no financial burden on landowners. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there is no justification for the asymmetry of the zones and the department did not create zones in Matagorda County following the discovery of CWD in that county. The department disagrees with the comment and responds that zone designations are configured to as much as possible follow roads, rivers, transmission lines and other easily recognized features in order to facilitate compliance and enforcement. Additionally, zones are sometimes irregularly shaped because they are configured to accommodate locations where deer processing facilities are located, which allows hunters to take carcasses to a processor without having to meet carcass movement requirements. Finally, an epidemiological investigation at the deer breeding facility in Matagorda County following the detection of CWD revealed that the positive deer had very recently arrived from an index facility, no deer had been released from the facility after the receipt of the deer that tested positive, and the facility was subsequently depopulated. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules should apply statewide. The department disagrees with the comment and responds that that a statewide SZ, statewide CZ or mixture thereof is unnecessary because zones are established in response to specific instances of CWD detection. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the necessity for the SZ in Duval County is suspect because there are 12 deer breeders in the area that constantly test for CWD. The department disagrees with the comment and responds that captive populations and free-ranging populations exist in discrete epidemiological contexts. A deer in a natural population lives and dies within a certain geographical area, whereas breeder deer can and are moved many dozens or even hundreds of miles between facilities. In each facility where they are introduced they come into contact with other deer, some or all of which may have been in other facilities and sometimes, multiple facilities; this magnifies and increases the chances of disease transmission. Thus, the amount of testing within breeding facilities is not indicative of disease prevalence in free-ranging populations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that their ranch last year was the source of 46 CWD-negative tissue samples, which accounted for over 26 percent of the total samples from voluntary testing efforts within seven miles of the index site, yet the department is imposing rules that will exert a severe negative impact on hunting operations. The commenter stated that in the past, tissue samples have been collected and stored for the department to retrieve on a weekly basis and the 48-hour requirement imposed by the rule is unreasonable. The commenter stated that because of demonstrated ability to collect and store samples, their ranch should be exempted from the rules pursuant to the department's general rulemaking authority under the Texas Administrative Procedures Act. The department disagrees that a testing regime on a single ranch can by itself, even at 100 percent of harvest, furnish confidence that CWD does not exist on the landscape. The department also responds that it enjoys no general rulemaking authority under the Texas Administrative Procedure Act; however, department rules do provide an exception to the 48-hour submission requirement if the department has authorized an alternative in writing. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "there should be some Deer Breeders on the board. They should not be able to force us to spend the money and test a deer before we can release it onto our own property. We are paying their salaries through MLD permits, scientific breeder permits, and hunting and fishing licenses." The commenter also stated that the department wants to put deer breeders out of business. The department disagrees with the comment and responds that if by "board" the commenter means the Parks and Wildlife Commission, there in fact are commissioners with experience with deer breeding permits. The department also notes that commissioners serve without compensation. In any case, the rules do not

affect deer breeders in SZs who are qualified to transfer deer. Finally, the department is not trying to put deer breeders out of business but to protect both free-ranging and captive herds from a deadly disease. No changes were made as a result of the comment.

One commenter opposed adoption and stated that with respect to the SZ expansion in Kimble County, the data collected so far do not support an expansion of the surveillance zone. The department agrees with the comment and responds the slight expansion of the SZ in Kimble is intended to allow hunters to lawfully transport carcasses to processors located within area being added to the zone. No changes were made as a result of the comment.

The department received 96 comments supporting adoption of the rules as proposed.

The Texas Deer Association opposed adoption of the rules as proposed.

The National Deer Association, the Texas Chapter of the Wildlife Society, and the Texas Wildlife Association supported adoption of the rules as proposed.

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation; Subchapter E, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds, urban white-tailed deer removal, and trapping and transporting surplus white-tailed deer; Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; Subchapters R and R-1, which authorize the commission to establish the conditions of a deer management permit for white-tailed and mule deer, respectively; 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.

§65.81 Containment Zones; Restrictions.

The areas described in paragraph (1) of this section are CZs.

(1) Containment Zones.

(A) Containment Zone 1: That portion of the state within the boundaries of a line beginning in Culberson County where U.S. Highway (U.S.) 62-180 enters from the State of New Mexico; thence southwest along U.S. 62-180 to F.M. 1111 in Hudspeth County; thence south on F.M. 1111 to I.H. 10 thence west along I.H. 10 to S.H. 20; thence northwest along S.H. 20 to Farm-to Market Road (F.M.) 1088; thence south along F.M. 1088 to the Rio Grande; thence northwest along the Rio Grande to the Texas-New Mexico border.

(B) Containment Zone 2: That portion of the state within the boundaries of a line beginning where I.H. 40 enters from the State of New Mexico in Deaf Smith County; thence east along I.H. 40 to U.S. 385 in Oldham County; thence north along U.S. 385 to Hartley in Hartley County; thence east along U.S. 87 to County Rd. 47; thence north along C.R. 47 to F.M. 281; thence west along F.M. 281 to U.S. 385; thence north along U.S. 385 to the Oklahoma state line.

(C) Containment Zone 3 is that portion of the state lying within the area designated as Containment Zone 3 as depicted in the following figure, more specifically described by the following latitude-longitude coordinate pairs: -99.37150859160, 29.63847446060; -99.37149088670, 29.63846662930; -99.37140891920, 29.63848553940; -99.37060541260, 29.63866345050; -99.36979991580, 29.63883435770; -99.36899250760, 29.63899824440; -99.36818326920, 29.63915509460; -99.36737228030, 29.63930489330; -99.36655962200, 29.63944762460; -99.36574537420, 29.63958327440; -99.36492961890, 29.63971182950; -99.36411243690, 29.63983327680; -99.36329390830, 29.63994760490; -99.36247411610, 29.64005480240; -99.36165314010, 29.64015485800; -99.36083106340, 29.64024776200; -99.36000796690, 29.64033350600; -99.35918393260, 29.64041208020; -99.35835904140, 29.64048347690; -99.35753337730, 29.64054768950; -99.35670702030, 29.64060471180; -99.35588005420, 29.64065453800; -99.35505256020, 29.64069716300; -99.35422462000, 29.64073258190; -99.35339631770, 29.64076079330; -99.35256773320, 29.64078179120; -99.35173895150, 29.64079557700; -99.35091005250, 29.64080214650; -99.35008112110, 29.64080150020; -99.34925223720, 29.64079363850; -99.34842348390, 29.64077856180; -99.34759494500, 29.64075627050; -99.34676670140, 29.64072676970; -99.34593883500, 29.64069005880; -99.34511142980, 29.64064614450; -99.34428456550, 29.64059502920; -99.34345832730, 29.64053671860; -99.34263279480, 29.64047121870; -99.34180805210, 29.64039853620; -99.34098417980, 29.64031867790; -99.34016125900, 29.64023165140; -99.33933937340, 29.64013746530; -99.33851860400, 29.64003613010; -99.33769903240, 29.63992765510; -99.33688073860, 29.63981205080; -99.33606380640, 29.63968932950; -99.33524831450, 29.63955950320; -99.33443434580, 29.63942258420; -99.33362197990, 29.63927858650; -99.33281129880, 29.63912752410; -99.33200238210, 29.63896941200; -99.33119531060, 29.63880426680; -99.33039016400, 29.63863210440; -99.32958702310, 29.63845294160; -99.32878596750, 29.63826679580; -99.32798707590, 29.63807368670; -99.32719042800, 29.63787363270; -99.32639610340, 29.63766665410; -99.32560418090, 29.63745277140; -99.32481473900, 29.63723200480; -99.32402785630, 29.63700437840; -99.32324361150, 29.63676991250; -99.32246208110, 29.63652863190; -99.32168334370, 29.63628056060; -99.32090747690, 29.63602572160; -99.32013455720, 29.63576414270; -99.31936466110, 29.63549584760; -99.31859786610, 29.63522086410; -99.31783424670, 29.63493921960; -99.31707388130, 29.63465094180; -99.31631684240, 29.63435606000; -99.31556320750, 29.63405460190; -99.31481305090, 29.63374659950; -99.31428518670, 29.63352422890; -99.31327613830, 29.63385871860; -99.31119621070, 29.63441522500; -99.30907905370, 29.63485166510; -99.30693374210, 29.63516616720; -99.30476946840, 29.63535738290; -99.30259551080, 29.63542449380; -99.30042118310, 29.63536721180; -99.29825580750, 29.63518578290; -99.29610866020, 29.63488098300; -99.29398894560, 29.63445412050; -99.29333570920, 29.63428256460; -99.29198312960, 29.63440193850; -99.28980918250, 29.63446884150; -99.28763488270, 29.63441135180; -99.28546954940, 29.63422971420; -99.28332246050, 29.63392471020; -99.28120282010, 29.63349764560; -99.27911971030, 29.63295034940; -99.27708205970, 29.63228516800; -99.27509859770, 29.63150495270; -99.27317782280, 29.63061304540; -99.27132796710, 29.62961326970; -99.26955695390, 29.62850990860;

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-99.46569104900, 29.63266919830; -99.46500583440, 29.64558932470; -99.41820001720, 29.64567544610; 29.63307663410; -99.46431600450, 29.63347808370; -99.41737598480, 29.64575439900; -99.41655109110, -99.46362162670, 29.63387351040; -99.46292277160, 29.64582617500; -99.4157542010, 29.64589076790; 29.63426287180; -99.46221950800, 29.63464613200; -99.41489905180, 29.64594817000; -99.41407207020, -99.46151190420, 29.63502325060; -99.46080003310, 29.64599837540; -99.41324455610, 29.64604138070; 29.63539419160; -99.46008396320, 29.63575891740; -99.41241659160, 29.64607718100; -99.41158826060, -99.45936376620, 29.63611739290; -99.45863951380, 29.64610577220; -99.41075964300, 29.64612715170; 29.63646958120; -99.45791127850, 29.63681544740; -99.40993082390, 29.64614131740; -99.40910188310, -99.45717913120, 29.63715495830; -99.45644314560, 29.64614826780; -99.40827290560, 29.64614800240; 29.63748807890; -99.45570339530, 29.63781477590; -99.40744397130, 29.64614052160; -99.40661516310, -99.45495995210, 29.63813501890; -99.45421289080, 29.64612582570; -99.40578656500, 29.64610391600; 29.63844877380; -99.45346228500, 29.63875601010; -99.40495825690, 29.64607479480; -99.40413032370, -99.45270821060, 29.63905669830; -99.45195074140, 29.64603846510; -99.40330284540, 29.64599493010; 29.63935080690; -99.45118995310, 29.63963830830; -99.40247590570, 29.64594419460; -99.40164958670, -99.45042592060, 29.63991917290; -99.44965872060, 29.64588626460; -99.40082396920, 29.64582114390; 29.64019337290; -99.44888842900, 29.64046088140; -99.39999913720, 29.64574883930; -99.39917517140, -99.44811512160, 29.64072167080; -99.44733887620, 29.64566935940; -99.39835215270, 29.64558271090; 29.64097571700; -99.44655976880, 29.64122299300; -99.39753016500, 29.64548890330; -99.39670928920, -99.44577787910, 29.64146347570; -99.44499328210, 29.64538794500; -99.39588960600, 29.64527984560; 29.64169714000; -99.44420605650, 29.64192396280; -99.39507119840, 29.64516461800; -99.39425414710, -99.44341628140, 29.64214392260; -99.44262403450, 29.64504227190; -99.39343853200, 29.64491281920; 29.64235699620; -99.44182939580, 29.64256316420; -99.39262443580, 29.64477627400; -99.39181193840, -99.44103244220, 29.64276240410; -99.44023325350, 29.64463264940; -99.39100112150, 29.64448195930; 29.64295469730; -99.43943190980, 29.64314002420; -99.39019206490, 29.64432421950; -99.38938484940, -99.43862848980, 29.64331836610; -99.43782307470, 29.64415944400; -99.38857955460, 29.64398765130; 29.64348970630; -99.43701574320, 29.64365402770; -99.38777626140, 29.64380885720; -99.38697504940, -99.43620657630, 29.64381131280; -99.43539565390, 29.64362307930; -99.38617599740, 29.64343033690; 29.64396154730; -99.43458305710, 29.64410471440; -99.38537918500, 29.64323064860; -99.38458469190, -99.43376886570, 29.64424080260; -99.43295316160, 29.64302403470; -99.38379259670, 29.64281051560; 29.64436979610; -99.43213602600, 29.64449168250; -99.38300297820, 29.64259011230; -99.38221591500, -99.43131753850, 29.64460645040; -99.43049778240, 29.64236284620; -99.38143148570, 29.64212874020; 29.64471408840; -99.42967683740, 29.64481458510; -99.38064976680, 29.64188781830; -99.37987083690, -99.42885478660, 29.64490793090; -99.42803171100, 29.64164010450; -99.37909477380, 29.64138562170; 29.64499411700; -99.42720769240, 29.64507313300; -99.37832165380, 29.64112439740; -99.37755155360, -99.42638281280, 29.64514497390; -99.42555715320, 29.64085645570; -99.37678455060, 29.64058182410; 29.64520963000; -99.42473079760, 29.64526709620; -99.37602071930, 29.64030053010; -99.37526013830, -99.42390382590, 29.64531736670; -99.42307632200, 29.64001260120; -99.37450288000, 29.63971806680; 29.64536043630; -99.42224836800, 29.64539630000; -99.37374902190, 29.63941695450; -99.37299863830, -99.42142004480, 29.64542495540; -99.42059143620, 29.63910929630; -99.37225180380, 29.63879512070; 29.64544639930; -99.42019538000, 29.64545320040; -99.37150859160, 29.63847446060.
-99.41984517350, 29.64549604270; -99.41902310740,

Figure: §31 TAC §65.81(1)(C)

(D) Containment Zone 4: That portion of the state lying within the boundaries of a line beginning in Val Verde County at the International Bridge and proceeding northeast along Spur 239 to U.S. 90; thence north along U.S. 90 to the intersection of U.S. 277/377, thence north along U.S. 277/377 to the U.S. 277/377 bridge at Lake Amistad (29.496183°, -100.913355°), thence west along the southern shoreline of Lake Amistad to International boundary at Lake Amistad dam, thence south along the Rio Grande River to the International Bridge on Spur 239.

(E) Containment Zone 5: That portion of the state within the boundaries of a line beginning at the intersection of County Road (C.R.) 3600 and E. Division St. in Slaton in Lubbock County; thence west along E Division St. to S. New Mexico St.; thence northwest along S. New Mexico St. to Railroad Ave.; thence northwest along Railroad Ave. to Industrial Dr.; thence northwest along Industrial Dr. to U.S. Highway (U.S.) 84; thence northwest along U.S. 84 to State Highway (S.H.) Spur 331; thence northwest along S.H. 331 to S.H. Loop 289; thence north along S.H. Loop 289 to Farm to Market (F.M.) 40 ; thence east along FM 40 to C.R. 3650; thence south along C.R. 3650 to C.R. 6840; thence east along C.R. 6840 to C.R. 3700; thence south along C.R. 3700 to C.R. 3600; thence south along C.R. 3600 to E. Division St.

(F) Containment Zone 6. Containment Zone 6 is that portion of the state lying within the area designated as Containment Zone 6 as depicted in the following figure, more specifically described by the following latitude-longitude coordinate pairs: -99.64149620530, 30.33874131980; -99.64368509530, 30.33881527790; -99.64586372900, 30.33901321630; -99.64802278630, 30.33933428830; -99.65015302980, 30.33977711870; -99.65224534450, 30.34033981470; -99.65429077770, 30.34101996710; -99.65628057710, 30.34181466700; -99.65820622800, 30.34272051420; -99.66005948830, 30.34373363190; -99.66183242590, 30.34484968550; -99.66351745180, 30.34606390020; -99.66510735200, 30.34737107880; -99.66659531760, 30.34876562900; -99.66797497780, 30.35024158170; -99.66924042170, 30.35179262020; -99.67038622830, 30.35341210660; -99.67046477880, 30.35354140340; -99.67147782260, 30.35460588970; -99.67153230830, 30.35466602360; -99.67188955110, 30.35506746450; -99.67307523230, 30.35651392490; -99.67312410770,

30.35657758260; -99.67320399680, 30.35668212250; -99.62890505410, 30.42231930720; -99.62857293300, -99.67419784160, 30.35807240520; -99.67454916760, 30.42231983860; -99.62857258110, 30.42231983940; 30.35859625790; -99.67490548510, 30.35911757060; -99.62853562830, 30.42231989810; -99.62853525040, -99.67503636190, 30.35931074510; -99.67551615580, 30.42231989880; -99.62470336720, 30.42232597020; 30.36002520870; -99.67559374500, 30.36014136260; -99.62442926150, 30.42232542820; -99.62223849030, -99.67626717380, 30.36115489090; -99.67635111830, 30.42225114130; -99.62005802410, 30.42205280100; 30.36128196820; -99.67635731860, 30.36129141260; -99.61789720740, 30.42173125720; -99.61576530140, -99.67702442120, 30.36230808630; -99.67772804480, 30.42128788980; -99.61367144290, 30.42072459720; 30.36343779160; -99.67786171250, 30.36366423400; -99.61162460530, 30.42004379510; -99.60963355960, -99.67809406440, 30.36406546940; -99.67822368020, 30.41924840030; -99.60770683680, 30.41834182150; 30.36429367690; -99.67830297560, 30.36443424190; -99.60585269270, 30.41732794490; -99.60407907050, -99.67837167020, 30.36455843800; -99.67856992290, 30.41621111470; -99.60239356740, 30.41499611640; 30.36489829520; -99.67891470550, 30.36548187040; -99.60080340260, 30.41368815750; -99.59931538690, -99.67926295430, 30.36606391440; -99.67965466960, 30.41229284120; -99.59793589010, 30.41081614710; 30.36671044570; -99.67976457160, 30.36689341470; -99.59667081880, 30.40926440230; -99.59552558690, -99.68033394380, 30.36784958850; -99.68069940250, 30.40764425470; -99.59450509380, 30.40596264510; 30.36848209490; -99.68110363450, 30.36923041450; -99.59361370580, 30.40422677810; -99.59285523420, -99.68115288840, 30.36932507690; -99.68164128190, 30.40244408940; -99.59223291930, 30.40062221490; 30.37031201670; -99.68186455470, 30.37079983660; -99.59174942070, 30.39876895810; -99.59140679900, -99.68190772670, 30.37089670500; -99.68244431460, 30.39689225700; -99.59120651520, 30.39500014900; 30.37219104650; -99.68252472940, 30.37240318770; -99.59114919160, 30.39313280380; -99.59115375540, -99.68256168900, 30.37250197030; -99.68292311190, 30.39242219590; -99.59118380940, 30.38774221940; 30.37353270560; -99.68339519710, 30.37497458840; -99.59119753520, 30.38560486270; -99.59124320070, -99.68340763060, 30.37501266300; -99.68385461430, 30.37849282500; -99.59124342770, 30.37846075860; 30.37638495130; -99.68388655430, 30.37648115870; -99.59132973720, 30.37656217650; -99.59155907020, -99.68392076900, 30.37656326040; -99.68419881580, 30.37467255410; -99.59193043630, 30.37279998160; 30.37725784890; -99.68482271700, 30.37907927560; -99.59244223560, 30.37095247640; -99.59309227100, -99.68530790520, 30.38093217980; -99.68565229720, 30.36913794860; -99.59387775000, 30.36736416610; 30.38280862860; -99.68585440850, 30.38470058780; -99.59479530410, 30.36563872200; -99.59584099880, -99.68591336530, 30.38659995700; -99.68582890890, 30.36396900160; -99.59701035040, 30.36236215260; 30.38849860270; -99.68560139020, 30.39038839380; -99.59829834880, 30.36082505220; -99.59969947650, -99.68523177540, 30.39226123790; -99.68472164090, 30.35936427870; -99.60120773080, 30.35798608380; 30.39410911390; -99.68407316160, 30.39592410690; -99.60281665440, 30.35669636630; -99.60451935700, -99.68328910920, 30.39769844280; -99.68237283390, 30.35550064420; -99.60540738080, 30.35493733740; 30.39942452120; -99.68132825340, 30.40109494840; -99.60543808850, 30.35491852200; -99.60546294390, -99.68015983740, 30.40270256770; -99.67887258500, 30.35489405770; -99.60555613110, 30.35480272720; 30.40424049180; -99.67747200500, 30.40570213190; -99.60706423050, 30.35342446360; -99.60867299970, -99.67596409470, 30.40708122550; -99.67435530910, 30.35213467300; -99.61037554920, 30.35093887330; 30.40837186230; -99.67265253920, 30.40956851340; -99.61216459030, 30.34984218270; -99.61331695410, -99.67086307820, 30.41066604980; -99.66920922530, 30.34922963580; -99.61385007130, 30.34880216210; 30.41155292840; -99.66558968940, 30.41337003040; -99.61555249780, 30.34760629390; -99.61734141820, -99.66497058320, 30.41391929180; -99.66336153640, 30.34650953120; -99.61808901110, 30.34609451280; 30.41520979110; -99.66165850930, 30.41640629650; -99.61915992100, 30.34551720800; -99.62361034360, -99.65986879620, 30.41750367980; -99.65800006350, 30.34311791310; -99.62473042750, 30.34253992590; 30.41849723880; -99.65606031690, 30.41938271650; -99.62666891670, 30.34165492410; -99.62866995560, -99.65405786830, 30.42015631680; -99.65200129780, 30.34088175330; -99.63072498160, 30.34022372110; 30.42081472460; -99.64989941800, 30.42135511900; -99.63282520140, 30.33968364210; -99.63496162850, -99.64776123680, 30.42177518250; -99.64559591810, 30.33926382870; -99.63712512170, 30.33896607510; 30.42207311640; -99.64341274240, 30.42224764220; -99.63930642450, 30.33879165670; -99.64149620530, -99.64149516520, 30.42229851800; -99.63885349220, 30.33874131980. 30.42230298220; -99.63719834400, 30.42230575200;

Figure: §31 TAC §65.81(1)(F)

(G) Existing CZs may be modified and additional CZs may be designated as necessary by the executive director as provided in §65.84 of this title (relating to Powers and Duties of the Executive Director).

(2) Restrictions.

(A) Except as provided in this section or §65.87 of this title (relating to Exception), no person within a CZ shall conduct, authorize or cause any activity involving the movement of a susceptible species under a permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, R, or R-1. Such prohibited activity, includes, but is not limited to transportation, introduction, removal, authorizing the transportation, introduction or removal of, or causing the transportation, introduction or removal of a live susceptible species into, out of, or within a CZ.

(B) If any portion of a deer breeding facility or release site is within a CZ, the entirety of the deer breeding facility or release site is in the CZ.

(C) If the department receives an application for a deer breeder permit for a new facility that is to be located within an area designated as a CZ, the department will issue the permit but will not

authorize the possession of susceptible species within the facility so long as the CZ designation exists.

(D) Deer that escape from a deer breeding facility within a CZ may not be recaptured unless specifically authorized under a herd plan.

(E) A deer breeding facility that is located in a CZ and designated by the department as MQ under the provisions of Division 2 of this subchapter may:

(i) receive deer from any facility in the state that is authorized to transfer deer; and

(ii) release or transfer breeder deer within the CZ.

(F) Except as authorized by §65.83 of this title (relating to Special Provisions) breeder deer may not be transferred to or from a deer breeding facility that is:

(i) located within a CZ; and

(ii) subject to the provisions of §65.99 of this title (relating to Breeding Facilities Epidemiologically Connected to Deer Infected with CWD).

(G) Breeder deer released within a CZ must be tested as provided in this subparagraph. If breeder deer are released during a "hunting year" (as defined in §65.90 of this title (relating to Definitions)), harvest at the release site must be equal to or greater than the number of breeder deer released at that site before the last day of the hunting year, otherwise the harvest and reporting requirements of this subparagraph must be met before the last day of the hunting year immediately following the release.

(H) The owner of a release site located within a CZ shall comply with the requirements of §65.93 of this title (relating to Harvest Log).

(I) A person who fails to comply with the requirements of subparagraph (G) of this paragraph commits an offense as provided in Parks and Wildlife Code, §43.367 and §65.89 of this division, and the department shall not authorize the additional release of breeder deer to that release site.

§65.82. Surveillance Zones; Restrictions.

The areas described in paragraph (1) of this section are SZs.

(1) Surveillance Zones.

(A) Surveillance Zone 1: That portion of the state lying within a line beginning where U.S. 285 enters from the State of New Mexico in Reeves County; thence southeast along U.S. 285 to R.M. 652; thence west along R.M. 652 to Rustler Springs Rd./FM 3541 in Culberson County; thence south along Rustler Springs Rd./F.M. 3541 to F.M. 2185; thence south along F.M. 2185 to Nevel Road; thence west along Nevel Road to County Road 501; thence south along County Road 501 to Weatherby Road; thence south along Weatherby Road to F.M. 2185; thence southwest along to F.M. 2185 to S.H. 54; thence south on S.H. 54 to U.S. 90; thence south along U.S. 90 to the Culberson County line; thence southwest along the Culberson County line to the Rio Grande River in Hudspeth County; thence north along the Rio Grande to F.M. 1088; thence northeast along F.M. 1088 to S.H. 20; thence southeast along S.H. 20 to I.H. 10; thence southeast along I.H. 10 to F.M 1111; thence north on F.M. 1111 to U.S. 62/180; thence east and north along U.S. 62/180 to the New Mexico state line in Culberson County.

(B) Surveillance Zone 2. That portion of the state lying within a line beginning at the New Mexico state line where U.S. 60 enters Texas; thence northeast along U.S. 60 to U.S. 87 in Randall County; thence south along U.S. 87 to S.H. 217 in Canyon; thence east along S.H. 217 to F.M. 1541; thence north along F.M. 1541 to Loop 335; thence east and north along Loop 335 to S.H. 136; thence northwest along S.H. 136 to N. Lakeside Dr.; thence north along N. Lakeside Dr. to E. Willow Creek Dr.; thence west along E. Willow Creek Dr. to Denton St.; thence north along Denton St. to E. Cherry; thence west along E. Cherry to N. Eastern St.; thence south along N. Eastern St. to E. Willow Creek Dr.; thence west along E. Willow Creek Dr. to U.S. 87; thence north along U.S. 87 to the City of Dumas; thence along the city limits of Dumas to U.S. 287 in Moore County; thence north along U.S. 287 to the Oklahoma state line.

(C) Surveillance Zone 3. That portion of the state not within the CZ described in §65.81(1)(C) of this title (relating to Containment Zones; Restrictions) lying within a line beginning the intersection of F.M. 1250 and U.S. Highway 90 in Hondo in Medina County; thence west along U.S. Highway 90 to F.M. 1574 in Uvalde County; thence south along F.M. 1574 to F.M. 1023 (Garner Field Road); thence west along F.M. 1023 to County Road 373; thence south along County Road 373 to County Road 374; thence west along County Road 374 to F.M. 140; thence northwest along F.M. 140 to F.M. 117; thence north along F.M. 117 to U.S. Highway 83; thence southwest along U.S. Highway 83 to F.M. 1435; thence north along F.M. 143 to U.S. Highway 90; thence west along U.S. Highway 90 to F.M. 2369; thence northwest along F.M. 2369 to F.M. 1403; thence north along F.M. 1403 to State Highway 55; thence northwest along S.H. 55 to Indian Creek Road; thence northeast along Indian Creek Road to Lower Frio Ranch Road; thence southeast along Lower Frio Ranch Road to Deep Creek; thence southeast along Deep Creek to the U.S. Highway 83; thence north along U.S. Highway 83 to State Highway 127 in Concan; thence southeast along State Highway 127 to the Sabinal River in Uvalde County; thence north along the Sabinal River to F.M. 187; thence north along F.M. 187 to F.M. 470 in Bandera County; thence east along F.M. 470 to Tarpley in Bandera County; thence south along F.M. 462 to 18th Street in Hondo; thence east along 18th Street to State Highway 173; Thence south along State Highway 173 to U.S. Highway 90 ; thence west along U.S. Highway 90 to Avenue E (F.M. 462); thence south along Avenue E (F.M. 462) to F.M. 1250; thence west along F.M 1250 to U.S. Highway 90.

(D) Surveillance Zone 4: That portion of the state lying within a line beginning in Val Verde County at the confluence of Sycamore Creek and the Rio Grande River (29.242341°, -100.793906°); thence northeast along Sycamore Creek to U.S. 277; thence northwest on U.S. 277 to Loop 79; thence north along Loop 79 to the Union Pacific Railroad; thence east along the Union Pacific Railroad to Liberty Drive (north entrance to Laughlin Air Force Base); thence north along Liberty Drive to U.S. 90; thence west along U.S. 90 to Loop 79; thence north along Loop 79 to the American Electric Power (AEP) Ft. Lancaster-to-Hamilton Road 138kV transmission line (29.415542°, -100.847993°); thence north along the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line to a point where the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line turns northwest (29.528552°, -100.871618°); thence northwest along the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line to the AEP Ft. Lancaster-to-Hamilton Road maintenance road (29.569259°, -100.984758°); thence along the AEP Ft. Lancaster-to-Hamilton Road maintenance road to Spur 406; thence northwest along Spur 406 to U.S. 90; thence south along U.S. 90 to Box Canyon Drive; thence west along Box Canyon Drive to Bluebonnet Drive; thence southwest along Bluebonnet Drive to Lake Drive; thence south along Lake Drive to Lake Amistad (29.513298°, -101.172454°), thence southeast along the International Boundary to the International Boundary at the Lake Amistad dam; thence southeast along the Rio Grande River to the confluence of Sycamore Creek (29.242341°, -100.793906°).

(E) Surveillance Zone 5: That portion of the state lying within the boundaries of a line beginning on U.S. 83 at the Kerr/Kimble County line; thence north along U.S. 83 to I.H. 10; thence northwest along I.H. 10 to South State Loop 481; thence west along South State Loop 481 to the city limit of Junction in Kimble County; thence following the Junction city limit so as to circumscribe the city of Junction before intersecting with F.M. 2169; thence east along F.M. 2169 to County Road (C.R.) 410; thence east along C.R. 410 to C.R. 412; thence south along C.R. 412 to C.R. 470; thence east along C.R. 470 to C.R. 420; thence south along C.R. 420 to F.M. 479; thence east along F.M. 479 to C.R. 443; thence south along C.R. 443 to U.S. 290; thence west along U.S. 290 to I.H. 10; thence southeast along I.H. 10 to the Kerr/Kimble County line; thence west along the Kerr/Kimble County line to U.S. 83.

(F) Surveillance Zone 6: That portion of the state within the boundaries of a line beginning at the intersection of State Highway (S.H.) 207 and Farm to Market (F.M.) 211 in Garza County; thence west along F.M. 211 to U.S. Highway (U.S.) 87 in Lynn County; thence north along U.S. 87 to F.M. 41 in Lubbock County; thence west along F.M. 41 to F.M. 179; thence north along F.M. 179 to F.M. 2641; thence east along F.M. 2641 to U.S. 62/82; thence east along U.S. 62/82 to S.H. 207 in Crosby County; thence south along S.H. 207 to F.M. 211 in Garza County.

(G) Surveillance Zone 7: That portion of the state lying within the boundaries of a line beginning at the intersection of S.H. 205 and U.S. Hwy. 80 in Kaufman County; thence east along U.S. 80 to North 4th Street in Wills Point in Van Zandt County; thence north along North 4th Street to F.M. 751; thence north along F.M. 751 to the south shoreline of Lake Tawakoni in Hunt County; thence west and north along the Lake Tawakoni shoreline to the confluence of Caddo Creek; thence northwest along Caddo Creek to West Caddo Creek; thence northwest along West Caddo Creek to I.H. 30; thence southwest along I.H. 30 to F.M. 548 in Rockwall County; thence southeast along F.M. 548 to S.H. 205 in Kaufman County; thence southeast along S.H. 205 to US Hwy. 80.

(H) Surveillance Zone 8.

(i) That portion of the state within the boundaries of a line beginning at the intersection of Farm to Market (F.M.) Road 624 and U.S. Highway (U.S.) 59 in Live Oak County; thence southwest along U.S. 59 to the intersection of County Road (C.R.) 101 in Duval County; thence southeast along C.R. 101 to North Julian Street in San Diego; thence south along Julian Street to State Highway (S.H.) 44; thence east on S.H. 44 to C.R. 145 in Jim Wells County; thence north along C.R. 145 to C.R. 172; thence east on C.R. 172 to C.R. 170; thence south on C.R. 170 to C.R. 120; thence east on C.R. 120; to U.S. 281; thence north on U.S. 281 to F.M. 624; thence west along F.M. 624 to U.S. 59.

(ii) For the purposes of this subchapter, the zone described in clause (i) of this subparagraph includes the following:

(I) the area within the city limits of Freer;

(II) the area within the city limits of Alice;

(III) the roadway and right-of-way of:

(-a-) U.S. 59 between the city of Freer and the intersection with C.R. 101;

(-b-) U.S. 44 between the city of Freer and the city of Alice; and (-c-) U.S. 281 between the city of Alice and the intersection with F.M. 624.

(iii) The zone established by this subparagraph ceases to exist two years from the effective date of this clause.

(I) Existing SZs may be modified and additional SZs may be designated as necessary by the executive director as provided in §65.84 of this title (relating to Powers and Duties of the Executive Director).

(2) Restrictions.

(A) Except as provided in §65.87 of this title (relating to Exception) and subparagraph (B) of this paragraph, no person within a SZ may conduct, authorize or cause any activity involving the movement of a susceptible species, into, out of, or within a SZ under a permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, R, or R-1. Such prohibited activity, includes, but is not limited to transportation, introduction, removal, authorizing the transportation, introduction or removal, or causing the transportation, introduction or removal of a live susceptible species into, out of, or within a SZ.

(B) Breeder Deer.

(i) Except as provided in Division 2 of this subchapter, a breeding facility that is within a SZ may:

(I) transfer to or receive breeder deer from any other deer breeding facility in this state that is authorized to transfer deer; and

(II) transfer breeder deer in this state for purposes of liberation, including to release sites within the SZ.

(ii) Deer that escape from a breeding facility within a SZ may not be recaptured unless specifically authorized under a herd plan.

(C) Breeder deer from a deer breeding facility located outside a SZ may be released within a SZ if authorized by Division 2 of this subchapter.

(D) Except as authorized by §65.83 of this title (relating to Special Provisions) breeder deer may not be transferred to or from a deer breeding facility that is:

(i) located within a SZ; and

(ii) subject to the provisions of §65.99 of this title (relating to Breeding Facilities Epidemiologically Connected to Deer Infected with CWD).

(E) Permits to Transplant Game Animals and Game Birds (Triple T permit). The department may authorize the release of susceptible species in a SZ under the provisions of a Triple T permit issued by the department under the authority of Parks and Wildlife Code, Chapter 43, Subchapter E and the provisions of Subchapter C of this chapter, but the department will not authorize the trapping of deer within a SZ for purposes of a Triple T permit.

(F) Deer Management Permit (DMP). The department may issue a DMP for a facility in a SZ; however, any breeder deer introduced to a DMP facility in a SZ must be released to the property for which the DMP is issued and may not be transferred anywhere for any purpose.

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 September 11, 2022.

TRD-202203636

James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: October 1, 2022
Proposal publication date: July 8, 2022
For further information, please call: (512) 389-4775

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 707. CHILD PROTECTIVE INVESTIGATIONS

The Department of Family and Protective Services (DFPS) adopts new §707.716 and amendments to §§707.451, 707.457, 707.465, 707.467, 707.469, 707.471, 707.473, 707.489, 707.491, 707.571, 707.573, 707.575, 707.577, 707.579, 707.581, 707.583, 707.585, 707.605, 707.615, 707.617, 707.623, 707.703, 707.765, 707.767, 707.791, 707.801 in Chapter 707 concerning Child Protective Investigations. Section 707.457 and §707.767 are adopted with changes to the proposed text published in the July 1, 2022, issue of the *Texas Register* (47 TexReg 3773) and will be republished. Sections 707.716, 707.451, 707.465, 707.467, 707.469, 707.471, 707.473, 707.489, 707.491, 707.571, 707.573, 707.575, 707.577, 707.579, 707.581, 707.583, 707.585, 707.605, 707.615, 707.617, 707.623, 707.703, 707.765, 707.791, 707.801 are adopted without changes to the proposed text and will not be republished. The edit to §707.767 does not change the nature or the scope of the rule nor does it create any new duties or power or affect new persons or entities, other than those already given notice. Rather the change more directly reflects what is already permitted under the rule. Accordingly, the rules will not be re-proposed.

The primary purpose of the revisions is to implement the legislative changes from the 87th Regular Session (2021) relating to the Investigations and Child Care Investigations (CCI) programs of the Child Protection Investigations (CPI) division of the Texas Department of Family and Protective Services (DFPS). Specifically, this involves implementing House Bill (HB) 567 and HB 2536 which amend the neglect definitions in Texas Family Code (TFC) §261.001(4); HB 375 and HB 1540 which make minor changes to the sexual abuse definitions in TFC 261.001(1); and HB 135 which adds new statutory requirements to TFC Chapter 261 regarding notifications of certain rights DFPS must provide to alleged perpetrators prior to an interview with the individual during the course of a child abuse and neglect investigation.

The revisions also consist of the following updates:

(1) For purposes of a traditional investigation conducted by the Investigations program, updating the rules to merely reflect the current screening criteria for intakes and updating citations and terminology used in the rules related to release hearings;

(2) For purposes of a school investigation, updating the rules to accurately reflect the current notification procedures to certain school personnel during the initiation of the investigation and providing additional clarification on who DFPS considers to be school personnel;

(3) For purposes of an investigation of a child care operation subject to regulation under Human Resources Code Chapter 42, clarifying investigation actions CCI staff take during the course of the investigation and clarifying the entities DFPS can release confidential investigation information to.

Except for the revisions related to legislative changes, the updates primarily explain and amplify, but not alter, existing policies and practices.

The 30-day comment period ended July 31, 2022. During this period, DFPS received comments from Texas Alliance of Child and Family Services. A summary of the comments and DFPS's response follows:

Comment: Texas Alliance of Child and Family Services commented that they believed the addition of rule §§707.716 and amendment to 707.765 were beneficial for the people who would be affected by these rules as it clarified the current law and practice. Texas Alliance of Child and Family Services also requested the addition of language to §707.767 to reiterate that a residential child-care operation may have access to otherwise redacted portions of an investigation if the operation is cited for a deficiency as part of the investigation, and to 707.801 in which they asked DFPS to repeat immediate danger language within the definition of neglect.

Response: DFPS will update §707.767 to specifically reference that a residential child-care operation can obtain otherwise redacted portions of an investigation report since it was the intent of DFPS's proposed amended language to allow for that access, however the additional language makes the intent clearer. DFPS will not be incorporating the proposed amendments to §707.801.

SUBCHAPTER A. INVESTIGATIONS

DIVISION 1. INTAKE, INVESTIGATION AND ASSESSMENT

40 TAC §§707.451, 707.457, 707.465, 707.467, 707.469, 707.471, 707.473, 707.489, 707.491

The amendments implement Human Resources Code §40.0024; 40.005; 40.042 and Texas Family Code §§261.001; 261.105(d); 261.3016; 261.3027; 261.308(d); 261.3091; 261.406.

The amendments are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

§707.457. What is sexual abuse?

(a) Sexual abuse is a subset of the statutory definitions of abuse that appear in Texas Family Code §261.001(1) and includes the following acts or omissions by a person:

(1) Sexual conduct harmful to a child's mental, emotional, or physical welfare, including:

(A) Conduct that constitutes the offense of continuous sexual abuse of young child or disabled individual under §21.02, Penal Code;

(B) Indecency with a child under §21.11, Penal Code;

(C) Sexual assault under §22.011, Penal Code; or

(D) Aggravated sexual assault under §22.021, Penal Code;

(2) Failure to make a reasonable effort to prevent sexual conduct harmful to a child;

(3) Compelling or encouraging the child to engage in sexual conduct as defined by §43.01, Penal Code, including compelling or encouraging the child in a manner that constitutes an offense of:

(A) Trafficking of persons under §20A.02(a)(7) or (8), Penal Code;

(B) Solicitation of prostitution under §43.021, Penal Code; or

(C) Compelling prostitution under §43.05(a)(2), Penal Code;

(4) Causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by §43.21, Penal Code, or pornographic; or

(5) Causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by §43.25, Penal Code.

(b) In this section, the following terms have the following meanings:

(1) "Causing, permitting, encouraging, engaging in, or allowing the photographing...." is a condition of the statutory definition of sexual abuse. It is met even if the child participates voluntarily.

(2) "Compelling or encouraging the child to engage in sexual conduct...." is a condition of the statutory definition of sexual abuse. It is met whether the child actually engages in sexual conduct or simply faces a substantial risk of doing so.

(3) "Pornographic" or "pornography" means material that visually depicts a child younger than 18 years of age at the time the image of the child was made who is engaging in sexual conduct in accordance with Texas Penal Code §43.26.

(4) "Sexual conduct harmful to a child's mental, emotional or physical welfare" includes but is not limited to rape; incest; sodomy; inappropriate touching of the child's anus, breast, or genitals, including touching under or on top of the child's clothing; deliberately exposing one's anus, breast, or any part of the genitals to a child; touching the child in a sexual manner or directing sexual behavior towards the child; showing pornography to a child; encouraging a child to watch or hear sexual acts; compelling, encouraging, or permitting a child to engage in prostitution; watching a child undress, shower, or use the bathroom with the intent to arouse or gratify one's sexual desire; voyeurism; sexually oriented acts, which may or may not include sexual contact or touching with intent to arouse or gratify the sexual desire of any person; and any sexually oriented act or practice that would cause a reasonable child under the same circumstance to feel uncomfortable or intimidated or that results in harm or substantial risk of harm to a child's growth, development, or psychological functioning.

(c) For purposes of subsection (a)(1)(A) of this section, we will investigate conduct that constitutes continuous sexual abuse of a child as long the child is under 18 years of age and regardless of any disabilities the child may have.

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 September 2, 2022.

TRD-202203488
Vicki Kozikoujekian
General Counsel
Department of Family and Protective Services
Effective date: September 22, 2022
Proposal publication date: July 1, 2022
For further information, please call: (512) 915-1729

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DIVISION 3. RELEASE HEARINGS

40 TAC §§707.571, 707.573, 707.575, 707.577, 707.579, 707.581, 707.583, 707.585

The amendments implement Human Resources Code §40.0024; 40.005; 40.042 and Texas Family Code §§261.001; 261.105(d); 261.3016; 261.3027; 261.308(d); 261.3091; 261.406.

The amendments are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

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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Vicki Kozikoujekian
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 915-1729

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SUBCHAPTER B. SCHOOL INVESTIGATIONS

40 TAC §§707.605, 707.615, 707.617, 707.623

The amendments implement Human Resources Code §40.0024; 40.005; 40.042 and Texas Family Code §§261.001; 261.105(d); 261.3016; 261.3027; 261.308(d); 261.3091; 261.406.

The amendments are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

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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Vicki Kozikoujekian
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For further information, please call: (512) 915-1729

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SUBCHAPTER C. CHILD CARE INVESTIGATIONS

DIVISION 1. DEFINITIONS

40 TAC §707.703

The amendment implements Human Resources Code §40.0024; 40.005; 40.042 and Texas Family Code §§261.001; 261.105(d); 261.3016; 261.3027; 261.308(d); 261.3091; 261.406.

The amendment is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

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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Vicki Kozikoujekian
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Department of Family and Protective Services
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For further information, please call: (512) 915-1729

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DIVISION 2. OVERVIEW OF INVESTIGATION IN CHILD CARE OPERATIONS

40 TAC §707.716

The new rule implements Human Resources Code §40.0024; 40.005; 40.042 and Texas Family Code §§261.001; 261.105(d); 261.3016; 261.3027; 261.308(d); 261.3091; 261.406.

The new rule is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

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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Vicki Kozikoujekian
General Counsel
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For further information, please call: (512) 915-1729

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DIVISION 4. CONFIDENTIALITY

40 TAC §707.765, §707.767

The amendments implement Human Resources Code §40.0024; 40.005; 40.042 and Texas Family Code §§261.001; 261.105(d); 261.3016; 261.3027; 261.308(d); 261.3091; 261.406.

The amendments are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

§707.767. Are there any portions of the abuse, neglect, and exploitation investigation records that may not be released to anyone?

(a) Except as described in subsection (b) of this section, we may not release the following portions of the abuse, neglect, and exploitation investigation records to anyone:

(1) Any information that would interfere with an ongoing law enforcement investigation or prosecution;

(2) Any information identifying the person who made a report that resulted in an investigation;

(3) The location of a family violence shelter;

(4) Information pertaining to an individual who was provided family violence services;

(5) The location of a victims of trafficking shelter center, which would include:

(A) A general residential operation that provides trafficking victim services under 26 Texas Administrative Code (TAC) chapter 748, subchapter V (relating to Additional Requirements For Operations that Provide Trafficking Services); and

(B) A child-placing agency that provides trafficking victim services under 26 TAC Chapter 749, Subchapter V (relating to Additional Requirements For Child-Placing Agencies That Provide Trafficking Victims Services);

(6) Information pertaining to an individual who was provided services at a victims of trafficking shelter center, including a general residential operation or a child-placing agency that provides trafficking victim services;

(7) The identity of any child or information identifying the child in an abuse, neglect, or exploitation investigation, unless the requestor is:

(A) The child's parent or prospective adoptive parent;

(B) A child day care operation that was cited for a deficiency as a result of the investigation;

(C) A residential child care operation where the investigation occurred if the operation is cited for a deficiency as a result of the investigation or the Department of Family and Protective Services (DFPS) determines it is necessary for the operation to ensure the welfare of children at the operation; or

(D) A single-source continuum contractor (SSCC) for community-based care that subcontracts with the child care operation where the investigation occurred;

(8) Foster home screenings, adoptive home screenings, and post-placement adoptive reports, unless:

(A) The requester is the person being evaluated; or

(B) The Department of Family and Protective Services (DFPS) Commissioner approves the release of a screening or report based on a determination that, in the Commissioner's discretion, the release advances the goals of child protection; and

(9) Any other information made confidential under state or federal law.

(b) Notwithstanding any other provision in this section, DFPS may provide any of the above confidential information to the following, as specified:

(1) DFPS staff, including volunteers, as necessary to perform their assigned duties;

(2) CCL in order to carry out its regulatory functions under Human Resources Code, Chapter 42;

(3) Law enforcement for the purpose of investigating allegations of child abuse, neglect, or exploitation; failure to report child abuse, neglect, or exploitation; or false or malicious reporting of alleged child abuse, neglect or exploitation;

(4) A member of the state legislature when necessary to carry out that member's official duties;

(5) Any other individuals ordered by an administrative law judge or judge of a court of competent jurisdiction; and

(6) A social study evaluator who has requested a complete, non-redacted copy of any investigative report regarding abuse, neglect, or exploitation that relates to any person residing in the residence subject to the child custody evaluations, as provided by Texas Family Code §107.111.

(c) Notwithstanding any other provision in this subchapter, Child Care Investigations staff, in consultation with the DFPS' Office of the General Counsel, may withhold any information in its records if the release of that information would endanger the life or safety of any individual.

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 September 2, 2022.

TRD-202203493
Vicki Kozikoujekian
General Counsel
Department of Family and Protective Services
Effective date: September 22, 2022
Proposal publication date: July 1, 2022
For further information, please call: (512) 915-1729

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DIVISION 5. ABUSE, NEGLECT, AND EXPLOITATION

40 TAC §707.791, §707.801

The amendments implement Human Resources Code §40.0024; 40.005; 40.042 and Texas Family Code §§261.001; 261.105(d); 261.3016; 261.3027; 261.308(d); 261.3091; 261.406.

The amendments are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

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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Vicki Kozikoujekian
General Counsel
Department of Family and Protective Services
Effective date: September 22, 2022
Proposal publication date: July 1, 2022
For further information, please call: (512) 915-1729

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Texas

Review Of Agency Rules

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

NOTICE OF RULE REVIEW - 4 TEXAS ADMINISTRATIVE CODE, PART I,

CHAPTER 18 - ORGANIC STANDARDS AND CERTIFICATION AND CHAPTER 21, CITRUS

The Texas Department of Agriculture (Department) files this notice of intent to review Texas Administrative Code, Title 4, Part 1, Chapter 18, Organic Standards and Certification, and Chapter 21, Citrus.

This review is being conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years.

The Department will consider whether the initial factual, legal, and policy reasons for adopting each rule in this chapter continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

Written comments may be submitted within 30 days following the publication of this notice in the *Texas Register.* Comments may be submitted to David Castillo, Deputy General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to David.Castillo@TexasAgriculture.gov.

TRD-202203671
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Filed: September 13, 2022

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Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

The State Board of Education (SBOE) adopts the review of 19 Texas Administrative Code (TAC) Chapter 89, Adaptations for Special Populations, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBOE in 19 TAC Chapter 89 relate to gifted/talented education, Texas certificate of high school equivalency, and special education services and settings and are organized under the following subchapters: Subchapter A, Gifted/Talented Education; Subchapter C, Texas Certificate of High School Equivalency; and Subchapter D, Special Education Services and Settings. The SBOE proposed the review of 19 TAC Chapter 89, Subchapters A, C, and D, in the February 25, 2022 issue of the *Texas Register* (47 TexReg 988).

Relating to the review of 19 TAC Chapter 89, Subchapters A, C, and D, the SBOE finds that the reasons for adopting Subchapters A, C, and D continue to exist and readopts the rules. No changes are necessary to Subchapters A, C, and D as a result of the review.

The SBOE received comments related to the review of Subchapter D.

Comment: An individual recommended revising 19 TAC §103.1301(g)(7) to include procedures for requesting to view or listen to a video or audio recording as part of the district's procedures for video surveillance of certain special education settings. The commenter explained that it is important that the requirements for requesting to view or listen to videos be set out in a district's procedures.

Board Response: This comment is outside the scope of the rule review of the SBOE rules in Chapter 89. Section 103.1301 is a rule under the authority of the commissioner of education.

Comment: An individual recommended revising 19 TAC §103.1301(g)(9) to apply to all times outside the instructional day and to apply when only one student may be present in a self-contained classroom. The commenter explained that there are times when a student or students may be in a classroom or setting that is not a part of the instructional day and that the need for video coverage is needed for these times as well. The commenter also noted that the rule should also apply when a single student is in a self-contained classroom or other special education setting.

Board Response: This comment is outside the scope of the rule review of the SBOE rules in Chapter 89. Section 103.1301 is a rule under the authority of the commissioner of education.

Comment: The 16 commenters stated the rules are still needed for gifted/talented (G/T) education.

Board Response: The SBOE agrees.

Comment: Eight commenters stated the rules and funding are still needed for G/T education.

Board Response: The SBOE agrees.

Comment: Eighteen commenters expressed the importance for G/T education for students.

Board Response: The SBOE agrees.

Comment: The commenters stated that the G/T program is necessary for the gifted students to alleviate the boredom of the regular classroom and provides students venues to express their skills and to work with similarly minded students.

Board Response: The SBOE agrees.

Comment: The commenter recommended the following: 1) remove the 30 hours of professional development requirement to be replaced with the TExES Gifted/Talented Supplemental 162 Exam; 2) change the requirement for newly assigned teachers to complete the G/T Supplemental exam within one year; 3) remove the annual six-hour G/T update with an undefined professional development in G/T education based on the district professional learning plan aligned to the needs of the staff; and 4) change all references of professional development to professional learning.

Board Response: The SBOE disagrees and offers the following clarification. The replacement of TExES Supplemental exam for the 30 hours of training would not meet the requirements of the law. Educator programs do not include G/T education as part of the requirements for the G/T certification as English as a Second Language. Texas Education Agency (TEA) staff will conduct a review of the feasibility of professional development requirements for educators, administrators, and counselors.

Comment: The commentor requested that administrators and counselors have mandatory annual G/T professional development.

Board Response: The SBOE provides the following clarification. TEA staff will conduct a review of the feasibility of professional development requirements for administrators and counselors.

Comment: The commentor requested the emphasis is placed on G/T education on the secondary setting.

Board Response: The SBOE agrees. TEA staff will work with a focus group to develop resources for secondary program design and services.

Comment: The commentor requested that TEA establish a database for the monitoring of the professional learning requirements for educators of G/T students.

Board Response: The SBOE provides the following clarification. TEA staff will review the capacity to develop and maintain a professional learning database.

Comment: The commentor suggested that TEA establish a database to track for compliance with the Texas State Plan for the Education of the Gifted/Talented.

Board Response: The SBOE provides the following clarification. TEA staff will review the capacity to develop and maintain a professional learning database.

This concludes the review of Chapter 89.

TRD-202203699
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: September 14, 2022

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 10 TAC §11.2(a)

Deadline	Documentation Required
01/02/2023	Application Acceptance Period Begins. Public Comment period starts.
01/06/2023	Pre-Application Final Delivery Date (including waiver requests). Supplemental Housing Tax Credits Intent to Request deadline.
02/15/2023	Deadline for submission of Application for .ftp access if pre-application not submitted.
03/01/2023	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). 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).
04/03/2023	Market Analysis Delivery Date pursuant to §11.205 of this chapter.
05/05/2023	Deadline for Third Party Request for Administrative Deficiency.
Early June 2023	Scoring Notices Issued for Majority of Applications Considered “Competitive.”

Deadline	Documentation Required
06/01/2023	Public comment deadline for the comment to be included in the Board materials relating to the July presentation of awards are due in accordance with §1.10.
June 2023	On or before June 30, publication of the list of Eligible Applications for Consideration for Award in July.
July 2023	On or before July 31, Board issuance of Final Awards.
August 2023	Commitments are Issued.
11/01/2023	Carryover Documentation Delivery Date.
11/30/2023	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)).
07/01/2024	10% Test Documentation Delivery Date.
12/31/2025	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
11/14/22	Department releases Materials for Notice of Intent for Supplemental Allocations.
11/22/22	Department releases Materials for Supplemental Allocations.
1/6/23	Deadline for Notice of Intent due for Supplemental Allocations.
1/27/23	Deadline for all Requests for Supplemental Allocations.
March Board meeting	Board approval of Supplemental Allocations under this Subchapter
05/01/23 (est.)	Commitments for Supplemental Allocations are Issued.
05/15/23 (est.)	Commitment Fees for the Supplemental Allocation and any conditions of the credit Allocation are to be met.
11/01/2023	Carryover Documentation Delivery Date.
11/30/2023	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)).
07/21/2024	10% Test Documentation Delivery Date.
12/31/25	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 §82.120(a)

Basics: anatomy and physiology; disorders of the skin, scalp, hair and nails; chemistry (haircoloring, chemical waving, and relaxing); bacteriology, sterilization and sanitation; safety, first aid, and sanitation; barber implements, tools, equipment and related theory; and history of barbering	150
Practice: shaving; mustaches and beards; haircutting; hairstyling; hair and scalp treatments, scalp massage; safety, first aid, and sanitation; hairweaving, extensions, and wigs; face and neck massage and treatments; facial hair removal; manicuring; chemistry (haircoloring, chemical waving, and relaxing); and razor techniques, safety, first aid, and sanitation.	750
Business: Texas barber laws and rules; customer service; barbershop management; professional ethics and image; safety, sanitation, related practices and theory; and hygiene and good grooming.	100
TOTAL	1,000

Figure: 16 TAC §82.120(b)

Cosmetology Operator to Class A Barber curriculum standards			
(1)	Instruction in theory, consisting of:		25 Hours
	(A)	History of Barbering	1
	(B)	Barber Laws and Rules Review	1
	(C)	Implements, Honing, and Stropping	5
	(D)	Shaving	5
	(E)	Men's Haircutting and tapering	5
	(F)	Beard and Mustache Trimming and Design	1
	(G)	Hair color Review	1
	(H)	Permanent Waving and Relaxing Review	1
	(I)	Manicuring and Nail Care Review	1
	(J)	Facial Treatments and Skin Care Review	1
	(K)	Anatomy and Physiology Review	1
	(L)	Blow-dry Styling Review	1
	(M)	Shampooing and Conditioning Review	1
(2)	Instruction in practical work, consisting of:		275 Hours
	(A)	Men's Haircutting and tapering	165
	(B)	Shaving, Mustache and Beard Trimming	85
	(C)	Hair coloring	5
	(D)	Permanent Waving and Relaxing	5
	(E)	Facial Treatments	5
	(F)	Shampooing and Conditioning and Blow-dry Styling	5
	(G)	Manicuring	5

Figure: 16 TAC §82.120(c)

Basics: anatomy and physiology; disorders of the skin, scalp, hair and nails; chemistry (haircoloring, chemical waving, and relaxing); bacteriology, sterilization and sanitation; safety, first aid, and sanitation; barber implements, tools, equipment and related theory; and history of barbering	150
Practice: shaving; mustaches and beards; haircutting; hairstyling; hair and scalp treatments, scalp massage; safety, first aid, and sanitation; hairweaving, extensions, and wigs; face and neck massage and treatments; facial hair removal; manicuring; chemistry (haircoloring, chemical waving, and relaxing); and razor techniques, safety, first aid, and sanitation.	750
Business: Texas barber laws and rules; customer service; barbershop management; professional ethics and image; safety, sanitation, related practices and theory; and hygiene and good grooming	100
TOTAL	1,000

Figure: 16 TAC §82.120(d)

MANICURIST CURRICULUM STANDARDS			
(1)	instruction in theory, consisting of:		45 hours
	(A)	bacteriology, sterilization, and sanitation	16 hours
	(B)	manicuring, equipment, and procedures	4 hours
	(C)	the nail and disorders	4 hours
	(D)	Texas barber law and rules	4 hours
	(E)	anatomy and physiology	4 hours
	(F)	skin	4 hours
	(G)	professional ethics	3 hours
	(H)	hygiene and good grooming	3 hours
	(I)	advanced nail techniques	3 hours
(2)	instruction in practical work, consisting of:		555 hours
	(A)	shaping nails	96 hours
	(B)	applying polish	74 hours
	(C)	trimming cuticle and buffing nails	59 hours
	(D)	hand and arm massage	57 hours
	(E)	removal of polish	57 hours
	(F)	application of artificial and gel nails	44 hours
	(G)	applying cuticle remover and loosening	40 hours
	(H)	preparation of manicure table	40 hours
	(I)	softening cuticle	37 hours
	(J)	Bleaching under free edge	18 hours
	(K)	cleaning under free edge	18 hours
	(L)	applying cuticle oil or cream	15 hours

Figure: 16 TAC §82.120(e)

BARBER TECHNICIAN/MANICURIST CURRICULUM STANDARDS		
THEORY		
A	Bacteriology, sterilization, and sanitation hygiene (M/T)	37 hours
B	Manicuring, equipment, and procedures (M)	4 hours
C	The nail and disorders (M)	4 hours
D	Texas barber law and rules (M/T)	8 hours
E	Anatomy and physiology (M)	4 hours
F	Skin (M)	4 hours
G	Professional ethics (M/T)	7 hours
H	Advanced nail techniques (M)	3 hours
I	Common disorders of the skin; facial treatments (T)	4 hours
J	Shampooing, equipment, and procedures (T)	4 hours
K	Cosmetic applications and massage (T)	3 hours
L	Good grooming; preparing patron and making appointments (T)	3 hours
M	Theory of massage, and structure of head, neck, and face (T)	2 hours
N	Rinsing, types and procedures (T)	2 hours
O	Scalp and hair treatments (T)	2 hours
PRACTICAL		
A	Shaping nails (M)	96 hours
B	Applying polish (M)	74 hours
C	Trimming cuticle and buffing nails (M)	59 hours
D	Hand and arm massage (M)	57 hours
E	Removal of polish (M)	57 hours
F	Application of artificial and gel nails (M)	44 hours
G	Applying cuticle remover and loosening	40 hours
H	Preparation of manicure table (M)	40 hours
I	Softening cuticle (M)	37 hours
J	Bleaching under free edge (M)	18 hours
K	Cleaning under free edge (M)	18 hours
L	Applying cuticle oil or cream (M)	15 hours
M	Application of shampoo and shampooing (T)	45 hours
N	Application of rinses and removal (T)	35 hours

O	Makeup application (T)	33 hours
P	Facial manipulations (T)	20 hours
Q	Application of conditioner and rinsing (T)	20 hours
R	Scalp manipulations (T)	20 hours
S	Brushing and drying (T)	18 hours
T	Sanitation and sterilization (T)	15 hours
U	Draping and scalp examination (T)	11 hours
V	Application and removal of creams (T)	10 hours
W	Application and removal of packs (T)	8 hours
X	Set-up for facial (T)	8 hours
Y	Preparation of work area for shampooing (T)	7 hours
Z	Patron protection (T)	5 hours

Figure: 16 TAC §82.120(f)

BARBER TECHNICIAN/HAIR WEAVING CURRICULUM STANDARDS		
THEORY		
A	Hygiene, bacteriology, sterilization, and sanitation (T/H)	28 hours
B	Common disorders of the skin; facial treatments and theory of massage (T)	4 hours
C	Shampooing, equipment, and procedures (T/H)	4 hours
D	Texas barber law and rules (T/H)	4 hours
E	Cosmetic applications and massage	3 hours
F	Professional ethics (T)	3 hours
G	Good grooming; preparing patron and making appointments (T/H)	5 hours
H	Anatomy and physiology-scalp: theory of head, neck, and face. Bones, major muscles, major nerves and functions, skin structures, appendages, conditions and lesions, structure, hair regularities, hair and scalp diseases (T/H)	30 hours
I	Composition of hair or fiber used (H)	2 hours
J	Rinsing, types and procedures (T/H)	2 hours
K	Chemistry of compounds, and mixtures, composition and uses of cosmetics in hair weaving and facial treatments (T/H)	2 hours
L	Scalp and hair treatments (T/H)	2 hours
PRACTICAL		
A	Definitions, importance, sanitary rules and laws, sterilization methods of unused hair and fiber droppings Basic hair weaving, repair on hair weaving, removal of weft, sizing and finishing.	150 hours
B	Professional practices: vocabulary, ethics, salon procedures, hygiene, grooming, professional attitudes, salesmanship, public relations including purpose, effect, equipment, implements, supplies, and preparation (T/H)	40 hours
C	Application of shampoo and shampooing (T/H)	45 hours
D	Application of rinses and removal (T)	35 hours
E	Makeup application (T)	33 hours
F	Facial manipulations (T)	20 hours
G	Application of conditioner and rinsing (T/H)	20 hours
H	Shampooing client, weft and extensions (H)	50 hours
I	Scalp manipulations (T/H)	20 hours
J	Brushing and drying (T/H)	18 hours
K	Draping and scalp examination (T/H)	11 hours

L	Application and removal of creams (T)	10 hours
M	Application and removal of packs (T)	8 hours
N	Set-up for facial (T)	8 hours
O	Preparation of work area for shampooing (T/H)	7 hours
P	Safety measures: client protection (T/H)	28 hours
Q	Chemistry in hair weaving Elements, compounds, and mixtures, composition and uses of cosmetics in hair weaving (H)	8 hours

Figure: 16 TAC §82.120(g)

BARBER TECHNICIAN CURRICULUM STANDARDS			
(1)	instruction in theory, consisting of:		45 hours
	(A)	hygiene, bacteriology, sterilization, and sanitation	18 hours
	(B)	common disorders of the skin; facial treatments	4 hours
	(C)	shampooing, equipment, and procedures	4 hours
	(D)	Texas barber law and rules	4 hours
	(E)	cosmetic applications and massage	3 hours
	(F)	professional ethics	3 hours
	(G)	good grooming; preparing patron and making appointments	3 hours
	(H)	theory of massage, and structure of head, neck, and face	2 hours
	(I)	rinsing, types and procedures	2 hours
	(J)	scalp and hair treatments	2 hours
(2)	instruction in practical work, consisting of:		255 hours
	(A)	application of shampoo and shampooing	45 hours
	(B)	application of rinses and removal	35 hours
	(C)	makeup application	33 hours
	(D)	facial manipulations	20 hours
	(E)	application of conditioner and rinsing	20 hours
	(F)	scalp manipulations	20 hours
	(G)	brushing and drying	18 hours
	(H)	sanitation and sterilization	15 hours
	(I)	draping and scalp examination	11 hours
	(J)	application and removal of creams	10 hours
	(K)	application and removal of packs	8 hours
	(L)	set-up for facial	8 hours
	(M)	preparation of work area for shampooing	7 hours
	(N)	patron protection	5 hours

Figure: 16 TAC §82.120(h)

Hair Weaving Curriculum Standards	
(1) Hair weaving:	150 hours
Basic hair weaving, repair on hair weaving, removal of weft, sizing and finishing	
(2) Shampooing client, weft and extensions:	50 hours
Basic shampooing, basic conditioners, semi-permanent and weakly rinses, basic hair drying, draping	
(3) Professional practices:	40 hours
Hair weaving as a profession, vocabulary, ethics, salon procedures, hygiene, grooming, professional attitudes, salesmanship, public relations, hair weaving/braiding skills, including purpose, effect, equipment, implements, supplies, and preparation	
(4) Anatomy and physiology-scalp:	30 hours
Major bones and functions, major muscles and functions, major nerves and functions, skin structures, functions, appendages, conditions and lesions, hair or fiber used, structure, composition, hair regularities, hair and scalp diseases	
(5) Chemistry in hair weaving:	10 hours
Elements, compounds, and mixtures, composition and uses of cosmetics in hair weaving	
(6) Sanitation and safety measures:	10 hours
Definitions, importance, sanitary rules and laws, sterilization methods of unused hair and fiber droppings	
(7) Safety measures: client protection	10 hours

Figure: 26 TAC §744.1015 [~~Figure: 40 TAC §744.1015~~]

Education	Experience
(1) A bachelor [~~bachelor's~~] degree with six college credit hours in management[~~,~~]	[~~and~~] at least one year of experience in a licensed operation or similar experience as specified in §744.1021 of this division [~~title~~] (relating to What types of experience may count towards meeting director qualifications?);
(2) An associate [~~associate's~~] of applied science degree in child development or a closely related field with six college credit hours in child development and six college credit hours in management. A "closely related field" is any educational instruction pertaining to the growth, development, physical or mental care, or education of children ages birth through 13 years[~~,~~]	[~~and~~] at least two years of experience in a licensed operation or similar experience as specified in §744.1021 of this division [~~title~~];
(3) Sixty college credit hours with nine college credit hours in child development and six college credit hours in management[~~,~~]	[~~and~~] at least two years of experience in a licensed operation or similar experience as specified in §744.1021 of this division; [~~title,~~] or instructor certification and one year experience in training others in a skill, talent, ability, expertise, or proficiency that is the goal of skill instruction or training that is a core component of your operation's program;
(4) Six college credit hours in management with a [~~A~~] Child Development Associate credential or Certified Child-Care Professional credential [~~with six college credit hours in management,~~]	[~~and~~] at least two years of experience in a licensed operation or similar experience as specified in §744.1021 of this division [~~title~~];
(5) A child-care administrator's certificate from a community college with at least 15 college credit hours in child development and three college credit hours in management[~~,~~]	[~~and~~] at least two years of experience in a licensed operation or similar experience as specified in §744.1021 of this division [~~title~~];
(6) A day-care administrator's credential issued by a professional organization or an educational institution and approved by Licensing based on criteria specified in	[~~and~~] at least two years of experience in a licensed operation or similar experience as specified in §744.1021 of this division [~~title~~]; or

Subchapter P of Chapter 745 of this title (relating to Day-Care Administrator's Credential Program)[~~,~~]	
(7) Nine college credit hours in child development and nine college credit hours in management[~~,~~]	[~~and~~] at least three years of experience in a licensed operation or similar experience as specified in §744.1021 of this title, or instructor certification and one year experience in training others in a skill, talent, ability, expertise, or proficiency that is the goal of skill instruction or training that is a core component of your operation's program.

Figure: 26 TAC §744.1301(a) [Figure: 26 TAC §744.1301]

Type of training:	**Who is required to take the training?**	**When must the training be completed?**
(1)(A) Orientation to your operation as required by §744.1303 of this division (relating to What must orientation for employees at my operation include?).	(B) Each employee.	(C) Within seven days of employment and before having unsupervised access to a child in care.
(2)(A) Eight clock hours of pre-service training as required by §744.1305 of this division (relating to What areas of training must the pre-service training for caregivers cover?).	(B) Each non-exempt caregiver. A caregiver may be exempt from pre-service training as specified in §744.1307 of this division (relating to Are any caregivers exempt from the pre-service training?).	(C) For non-exempt caregivers, within 90 days of employment and before being counted in the child/caregiver ratio.
(3)(A) Pediatric first aid with rescue breathing and choking as required by §744.1315(a) of this division (relating to Who must have pediatric first aid and pediatric CPR training?).	(B) Each caregiver, site director, program director, and operation director.	(C)(i) Within 90 days of employment and before having unsupervised access to a child in care; and (C)(ii) The person must stay current in this training.
(4)(A) Pediatric CPR as required by §744.1315(b) of this division.	(B) Each caregiver, site director, program director, and operation director.	(C)(i) Within 90 days of employment; and (C)(ii) The person must stay current in this training.

(5)(A)15 clock hours of annual training as required by §744.1309 of this division (relating to What areas of training must the annual training for caregivers and site directors cover?).	(B) Each caregiver and site director.	(C)(i) Within 12 months of employment; and (C)(ii) During each 12-month period, and as further required by §744.1313 of this division (relating to When must annual training for my caregivers and director be obtained?).
(6)(A) 20 clock hours of annual training as required by §744.1311 of this division (relating to What areas of training must the annual training for an operation director or a program director cover?).	(B) Each program director or operation director.	(C)(i) Within 12 months of employment; and (C)(ii) During each 12-month period, and as further required by §744.1313 of this division.
(7)(A) Two clock hours of transportation training as required by §744.1317 of this division (relating to What additional training must an employee and director have if the operation transports children?).	(B)(i) The site director, and program director or operation director, if the operation transports a child whose chronological or developmental age is younger than nine years old; and (B)(ii) Each employee who transports a child whose chronological or developmental age is younger than nine years old.	(C)(i) Prior to transporting children; and (C)(ii) Annually[,] thereafter.

Figure: 26 TAC §744.1403(a)

Type of training:	**Who is required to take the training?**	**When must the training be completed?**
(1)(A) Orientation to your child-care operation, as required by §744.1303 of this subchapter (relating to What must orientation for employees at my operation include?).	(B)(i) Each substitute; (B)(ii) Each contractor; and (B)(iii) Each volunteer, except as noted in §744.1401(d) of this division (relating to What minimum standards must substitutes, volunteers, or contractors comply with?).	(C) Before beginning the relevant duties.
(2)(A) Eight clock hours of pre-service training, as required by §744.1305 of this subchapter (relating to What areas of training must the pre-service training for caregivers cover?).	(B) Each substitute, volunteer, and contractor who is counted in the child to caregiver ratio, except as noted in §744.1401(d) of this division.	(C)(i) Before the substitute, volunteer, or contractor may be counted in the child to caregiver ratio; and (C)(ii) Within 90 days of beginning the relevant caregiver duties.
(3)(A) Pediatric first aid with rescue breathing as required by 744.1315(a) of this subchapter (relating to Who must have pediatric first-aid and pediatric CPR training?).	(B) Each substitute, volunteer, and contractor who is counted in the child to caregiver ratio, except as noted in §744.1401(d) of this division.	(C)(i) Within 90 days of beginning the relevant caregiver duties and before having unsupervised access to a child in care; and (C)(ii) The person must stay current in this training.
(4)(A) Pediatric CPR as required by §744.1315(b) of this subchapter.	(B) Each substitute, volunteer, and contractor who is counted in the child to caregiver ratio, except as noted in §744.1401(d) of this division.	(C)(i) Within 90 days of beginning the relevant caregiver duties; and (C)(ii) The person must stay current in this training.
(5)(A) 15 hours of annual clock training as required by §744.1309 of this subchapter (relating to What areas of training must the annual training for caregivers and site directors cover?).	(B) Each substitute, volunteer, and contractor who is counted in the child to caregiver ratio, except as noted in §744.1401(d) of this division.	(C)(i) Within 12 months of beginning the relevant caregiver duties; and (C)(ii) During each 12-month period, as further required by §744.1313 of this subchapter (relating to When must annual training for my caregivers and director be obtained?).
(6)(A) Two clock hours of transportation training as required by §744.1317 of	(B) Each substitute, volunteer, and contractor who transports a child	(C)(i) Prior to transporting children; and

this subchapter (relating to What additional training must an employee and director have if the operation transports children?).	whose chronological or developmental age is younger than nine years old.	(C)(ii) Annually, thereafter.

Figure: 26 TAC §744.3807(e)

If the child is…	Being transported in this type of vehicle as specified in §744.3803(b) of this chapter (relating to What type of vehicle may I use to transport children?)…	Then the child must be secured in…
(1) 3 years of age	All vehicles	A rear-facing child safety seat if the child is within the rear-facing weight and height limit of the child safety seat or a forward-facing child safety seat with a harness for as long as possible, until the child reaches the highest weight or height allowed by the child safety seat manufacturer
(2) 4 years of age and within the weight and height limit of the forward-facing child safety seat	(A) General purpose vehicle and small school bus	A forward-facing child safety seat with a harness, a safety vest, or harness according to the manufacturer's instructions
(2) 4 years of age and within the weight and height limit of the forward-facing child safety seat	(B) Large school bus	A safety restraint system according to the vehicle manufacturer's instruction
(3) 4 through 7 years of age, has outgrown the weight or height limit of the forward-facing child safety seat, and is less than 4 feet, 9 inches in height; or 4 through 7 years of age, has outgrown the weight or height limit of the forward-facing child safety seat, and is 4 feet, 9 inches in height or taller, but cannot be properly secured by the	(A) General purpose vehicle	A belt-positioning booster seat, safety vest, or harness according to the manufacturer's instructions

lap and shoulder portions of the vehicle safety belt		
(3) 4 through 7 years of age, has outgrown the weight or height limit of the forward-facing child safety seat, and is less than 4 feet, 9 inches in height; or 4 through 7 years of age, has outgrown the weight or height limit of the forward-facing child safety seat, and is 4 feet, 9 inches in height or taller, but cannot be properly secured by the lap and shoulder portions of the vehicle safety belt	(B) Small school bus	A properly fitting safety belt anywhere the child sits in the vehicle
(3) 4 through 7 years of age, has outgrown the weight or height limit of the forward-facing child safety seat, and is less than 4 feet, 9 inches in height; or 4 through 7 years of age, has outgrown the weight or height limit of the forward-facing child safety seat, and is 4 feet, 9 inches in height or taller, but cannot be properly secured by the lap and shoulder portions of the vehicle safety belt	(C) Large school bus	A safety restraint system according to the vehicle manufacturer’s instruction
(4) 4 through 7 years of age, has outgrown the weight or height limit of the forward-facing child safety seat, can be properly secured by the lap and shoulder portions of the vehicle safety belt, and	(A) General purpose vehicle and small school bus	A properly fitting safety belt anywhere the child sits in the vehicle

is 4 feet, 9 inches in height or taller		
(4) 4 through 7 years of age, has outgrown the weight or height limit of the forward-facing child safety seat, can be properly secured by the lap and shoulder portions of the vehicle safety belt, and is 4 feet, 9 inches in height or taller	(B) Large school bus	A safety restraint system according to the vehicle manufacturer's instruction
(5) 8 through 12 years of age, and is less than 4 feet, 9 inches in height; or 8 through 12 years of age and is 4 feet, 9 inches in height or taller, but cannot be properly secured by the lap and shoulder portions of the vehicle safety belt	(A) General purpose vehicle	A belt-positioning booster seat, safety vest, or harness according to the manufacturer's instructions
(5) 8 through 12 years of age, and is less than 4 feet, 9 inches in height; or 8 through 12 years of age and is 4 feet, 9 inches in height or taller, but cannot be properly secured by the lap and shoulder portions of the vehicle safety belt	(B) Small school bus	A properly fitting safety belt anywhere the child sits in the vehicle
(5) 8 through 12 years of age, and is less than 4 feet, 9 inches in height; or 8 through 12 years of age and is 4 feet, 9 inches in height or taller, but cannot be properly secured by the lap and shoulder portions of the vehicle safety belt	(C) Large school bus	A safety restraint system according to the vehicle manufacturer's instruction

(6) 8 through 12 years of age, can be properly secured by the lap and shoulder portions of the vehicle safety belt, and is 4 feet, 9 inches in height or taller	(A) General purpose vehicle and small school bus	A properly fitting safety belt anywhere the child sits in the vehicle
(6) 8 through 12 years of age, can be properly secured by the lap and shoulder portions of the vehicle safety belt, and is 4 feet, 9 inches in height or taller	(B) Large school bus	A safety restraint system according to the vehicle manufacturer’s instruction
(7) 12 through 14 years of age	(A) General purpose vehicle and small school bus	A properly fitting safety belt anywhere the child sits in the vehicle;
(7) 12 through 14 years of age	(B) Large school bus	A safety restraint system according to vehicle manufacturer's instruction.

Figure: 26 TAC §746.1015 [~~Figure: 40 TAC §746.1015~~]

Education	Experience
(1) A bachelor [~~bachelor's~~] degree with 12 college credit hours in child development and six college credit hours in management[~~,~~]	and at least one year of experience in a licensed child-care center;
(2) An associate [~~associate's~~] of applied science degree in child development or a closely related field with six college credit hours in child development and six college credit hours in management. A "closely related field" is any educational instruction pertaining to the growth, development, physical or mental care, or education of children ages birth through 13 years[~~,~~]	and at least two years of experience in a licensed child-care center;
(3) Sixty college credit hours with nine college credit hours in child development and six college credit hours in management[~~,~~]	and at least two years of experience in a licensed child-care center;
(4) A child-care administrator's certificate from a community college with at least 15 college credit hours in child development and three college credit hours in management[~~,~~]	and at least two years of experience in a licensed child-care center;
(5) Six college credit hours in management with a [~~A~~] Child Development Associate credential or Certified Child-Care Professional credential [~~with six college credit hours in management,~~]	and at least two years of experience in a licensed child-care center;
(6) A day-care administrator's credential issued by a professional organization or educational institution and approved by Licensing based on criteria specified in Subchapter P of Chapter 745 of this title[~~,~~] (relating to Day-Care Administrator's Credential Program)[~~,~~]	and at least two years of experience in a licensed child-care center; or

Figure: 26 TAC §746.1017 [~~Figure :40 TAC §746.1017~~]

Education	Experience
(1) A bachelor [~~bachelor's~~] degree with 12 college credit hours in child development and three college credit hours in management[~~,~~]	and at least one year of experience in a licensed child-care center or a licensed or registered child-care home;
(2) An associate [~~associate's~~] of applied science degree in child development or a closely related field with six college credit hours in child development and three college credit hours in management. A "closely related field" is any educational instruction pertaining to the growth, development, physical or mental care, or education of children ages birth through 13 years[~~,~~]	and at least one year of experience in a licensed child-care center or a licensed or registered child-care home;
(3) Sixty college credit hours with six college credit hours in child development and three college credit hours in management[~~,~~]	and at least one year of experience in a licensed child-care center or a licensed or registered child-care home;
(4) Six college credit hours in management with a [~~A~~] Child Development Associate credential or Certified Child-Care Professional credential [~~with three college credit hours in management,~~]	and at least one year of experience in a licensed child-care center or a licensed or registered child-care home;
(5) A child-care administrator's certificate from a community college with at least 15 college credit hours in child development and three college credit hours in management[~~,~~]	and at least two years of experience in a licensed child-care center or a licensed or registered child-care home;
(6) A day-care administrator's credential issued by a professional organization or an educational institution and approved by Licensing based on criteria specified in Subchapter P of Chapter 745 of this title (relating to Day-Care Administrator's Credential Program)[~~,~~]	and at least two years of experience in a licensed child-care center or licensed or registered child-care home; or
(7) Seventy-two clock hours of training in child development and 30 clock hours in management[~~,~~]	and at least three years of experience in a licensed child-care center or a licensed or registered child-care home.

Figure: 26 TAC §746.1301(a) [~~Figure: 26 TAC §746.1301~~]

Type of training:	**Who is required to take the training?**	**When must the training be completed?**
(1)(A) Orientation to your child-care [~~child care~~] center as required by §746.1303 of this division (relating to What must orientation for employees at my child-care [~~child care~~]center include?).	(B) Each employee.	(C) Within seven days of employment and before having unsupervised access to a child in care.
(2)(A) 24 clock hours of pre-service training as required by §746.1305 of this division (relating to What must be covered in pre-service training for caregivers?).	(B) Each nonexempt caregiver. A caregiver may be exempt from pre-service training as specified in §746.1307 of this division (relating to Are any caregivers exempt from the pre-service training?).	(C) For nonexempt caregivers: (i) Eight hours before the caregiver may be counted in the child/caregiver ratio; and (ii) 16 hours within 90 days of employment.
(3)(A) Pediatric first aid with rescue breathing as required by §746.1315(a) of this division (relating to Who must have pediatric first-aid and pediatric CPR training?).	(B) Each caregiver and child-care center director.	(C)(i) Within 90 days of employment and before having unsupervised access to a child in care; and (C)(ii) The person must stay current in this training.

(4)(A) Pediatric CPR as required by §746.1315(b) of this division.	(B) Each caregiver and child-care center director.	(C)(i) Within 90 days of employment; and (C)(ii) The person must stay current in this training.
(5) 24 clock hours of annual training as required by §746.1309 of this division (relating to What areas of training must the annual training for caregivers cover?).	(B) Each caregiver.	(C)(i) Within 12 months of employment; and (C)(ii) During each 12-month period, and as further required by §746.1313 of this division (relating to When must annual training for my caregivers and director be obtained?).
(6)(A) 30 clock hours of annual training as required by §746.1311 of this division (relating to What areas of training must the annual training for my child-care center director cover?).	(B) A child-care center director.	(C)(i) Within 12 months of employment; and (C)(ii) During each 12-month period, and as further required by §746.1313 of this division.
(7)(A) Two clock hours of transportation training as required by §746.1316 of this division (relating to What additional training must an employee and director have if the operation transports children?).	(B)(i) The child-care center director, if the center transports a child whose chronological or developmental age is younger than nine years old; and (B)(ii) Each employee who transports a child whose chronological or developmental age is younger than nine years old.	(C)(i) Prior to transporting children; and (C)(ii) Annually[,] thereafter.

Figure 26 TAC §746.1403(a)

Type of training:	**Who is required to take the training?**	**When must the training be completed?**
(1)(A) Orientation to your child-care center as required by §746.1303 of this subchapter (relating to What must orientation for employees at my child-care center include?).	(B)(i) Each substitute; (B)(ii) Each contractor; and (B)(iii) Each volunteer, except as noted in §746.1401(d) of this division (relating to What minimum standards must substitutes, volunteers, or persons under contract with my center comply with?).	(C) Before beginning the relevant duties.
(2)(A) 24 clock hours of pre-service training as required by §746.1305 of this subchapter (relating to What must be covered in pre-service training for caregivers?).	(B) Each substitute, volunteer, and contractor who is counted in the child to caregiver ratio, except as noted in §746.1401(d) of this division.	(C)(i) 8 hours before the substitute, volunteer, or contractor may be counted in the child to caregiver ratio; and (C)(ii) 16 hours within 90 days of beginning the relevant caregiver duties.
(3)(A) Pediatric first aid with rescue breathing, as required by 746.1315(a) of this subchapter (relating to Who must have pediatric first-aid and pediatric CPR training?).	(B) Each substitute, volunteer, and contractor who is counted in the child to caregiver ratio, except as noted in §746.1401(d) of this division.	(C)(i) Within 90 days of beginning the relevant caregiver duties and before having unsupervised access to a child in care; and (C)(ii) The person must stay current in this training.
(4)(A) Pediatric CPR as required by §746.1315(b) of this subchapter.	(B) Each substitute, volunteer, and contractor who is counted in the child to caregiver ratio, except as noted in §746.1401(d) of this division.	(C)(i) Within 90 days of beginning the relevant caregiver duties; and (C)(ii) The person must stay current in this training.
(5)(A) 24 hours of annual clock training, as required by §746.1309 of this subchapter (relating to What areas of training must the annual training for caregivers cover?).	(B) Each substitute, volunteer, and contractor who is counted in the child to caregiver ratio, except as noted in §746.1401(d) of this division.	(C)(i) Within 12 months of beginning the relevant caregiver duties; and (C)(ii) During each 12-month period, as further required by §746.1313 of this subchapter (relating to When must annual training for my caregivers and director be obtained?).
(6)(A) 2 clock hours of	(B) Each substitute,	(C)(i) Prior to

transportation training, as required by §746.1316 of this subchapter (relating to What additional training must an employee and director have if the operation transports children?).	volunteer, and contractor who transports a child whose chronological or developmental age is younger than nine years old.	transporting children; and (C)(ii) Annually, thereafter.

Figure 26 TAC §746.5607(e)

If the child is…	Being transported in this type of vehicle as specified in §746.5603(b) of this chapter (relating to What type of vehicle may I use to transport children?)…	Then the child must be secured in…
(1) An infant or toddler through at least 2 years of age	All vehicles	A rear-facing only child safety seat or a convertible child safety seat used rear facing for as long as possible, until the child reaches the highest weight or height allowed by the child safety seat manufacturer
(2) 2 years of age and older and within the weight and height limit of the rear or forward-facing child safety seat	All vehicles	A rear or forward-facing child safety seat with a harness for as long as possible, until the child reaches the highest weight or height allowed by the child safety seat manufacturer
(3) 4 years of age and within the weight and height limit of the forward-facing child safety seat	(A) General purpose vehicle and small school bus	A forward-facing child safety seat with a harness, a safety vest, or harness according to the manufacturer’s instructions
(3) 4 years of age and within the weight and height limit of the forward-facing child safety seat	(B) Large school bus	A safety restraint system according to the vehicle manufacturer’s instruction
(4) 4 through 7 years of age, has outgrown the weight or height limit of the forward-facing child safety seat, and is less than 4 feet, 9 inches in height; or 4 through 7 years of age, has outgrown the weight or	(A) General purpose vehicle	A belt-positioning booster seat, safety vest, or harness according to the manufacturer’s instructions

height limit of the forward-facing child safety seat, and is 4 feet, 9 inches in height or taller, but cannot be properly secured by the lap and shoulder portions of the vehicle safety belt		
(4) 4 through 7 years of age, has outgrown the weight or height limit of the forward-facing child safety seat, and is less than 4 feet, 9 inches in height; or 4 through 7 years of age, has outgrown the weight or height limit of the forward-facing child safety seat, and is 4 feet, 9 inches in height or taller, but cannot be properly secured by the lap and shoulder portions of the vehicle safety belt	(B) Small school bus	A properly fitting safety belt anywhere the child sits in the vehicle
(4) 4 through 7 years of age, has outgrown the weight or height limit of the forward-facing child safety seat, and is less than 4 feet, 9 inches in height; or 4 through 7 years of age, has outgrown the weight or height limit of the forward-facing child safety seat, and is 4 feet, 9 inches in height or taller, but cannot be properly secured by the lap and shoulder portions of the vehicle safety belt	(C) Large school bus	A safety restraint system according to the vehicle manufacturer’s instruction
(5) 4 through 7 years of age, has outgrown the weight or height limit of the forward-facing child safety seat, can be properly secured by the lap and shoulder portions of	(A) General purpose vehicle and small school bus	A properly fitting safety belt anywhere the child sits in the vehicle

the vehicle safety belt, and is 4 feet, 9 inches in height or taller		
(5) 4 through 7 years of age, has outgrown the weight or height limit of the forward-facing child safety seat, can be properly secured by the lap and shoulder portions of the vehicle safety belt, and is 4 feet, 9 inches in height or taller	(B) Large school bus	A safety restraint system according to the vehicle manufacturer’s instruction
(6) 8 through 12 years of age, and is less than 4 feet, 9 inches in height; or 8 through 12 years of age and is 4 feet, 9 inches in height or taller, but cannot be properly secured by the lap and shoulder portions of the vehicle safety belt	(A) General purpose vehicle	A belt-positioning booster seat, safety vest, or harness according to the manufacturer's instructions
(6) 8 through 12 years of age, and is less than 4 feet, 9 inches in height; or 8 through 12 years of age and is 4 feet, 9 inches in height or taller, but cannot be properly secured by the lap and shoulder portions of the vehicle safety belt	(B) Small school bus	A properly fitting safety belt anywhere the child sits in the vehicle
(6) 8 through 12 years of age, and is less than 4 feet, 9 inches in height; or 8 through 12 years of age and is 4 feet, 9 inches in height or taller, but cannot be properly secured by the lap and shoulder portions of the vehicle safety belt	(C) Large school bus	A safety restraint system according to the vehicle manufacturer’s instruction
(7) 8 through 12 years of age, can be properly secured by the lap and shoulder portions of the vehicle safety belt, and is 4	(A) General purpose vehicle and small school bus	A properly fitting safety belt anywhere the child sits in the vehicle

feet, 9 inches in height or taller		
(7) 8 through 12 years of age, can be properly secured by the lap and shoulder portions of the vehicle safety belt, and is 4 feet, 9 inches in height or taller	(B) Large school bus	A safety restraint system according to the vehicle manufacturer’s instruction
(8) 12 through 14 years of age	(A) General purpose vehicle and small school bus	A properly fitting safety belt anywhere the child sits in the vehicle;
(8) 12 through 14 years of age	(B) Large school bus	A safety restraint system according to vehicle manufacturer's instruction.

Figure: 26 TAC §747.1107(8)

Education	Experience
(A) A bachelor [~~bachelor's~~] degree with 12 college credit hours in child development and three college credit hours in management[,]	and at least one year of experience in a licensed child-care center or licensed or registered child-care home;
(B) An associate [~~associate's~~] of applied science degree in child development or a closely related field with six college credit hours in child development and three college credit hours in management. A "closely related field" is any educational instruction pertaining to the growth, development, physical or mental care, or education of children ages birth through 13 years[,]	and at least one year of experience in a licensed child-care center or licensed or registered child-care home;
(C) Sixty college credit hours with six college credit hours in child development and three college credit hours in management[,]	and at least one year of experience in a licensed child-care center or licensed or registered child-care home;
(D) Three college credit hours in management with a [~~A~~] Child Development Associate Credential or Certified Child-Care Professional credential[~~, with three college credit hours in management,~~]	and at least one year of experience in a licensed child-care center or licensed or registered child-care home;
(E) A child-care administrator's certificate from a community college with at least 15 college credit hours in child development and three college credit hours in management[,]	and at least two years of experience in a licensed child-care center or licensed or registered child-care home;
(F) A day-care administrator's credential issued by a professional organization or an educational institution and approved by Licensing based on criteria specified in 40 TAC Chapter 745, Subchapter P (relating to Day-Care Administrator's Credential Program)[,]	and at least two years of experience in a licensed child-care center or licensed or registered child-care home; or
(G) Seventy-two clock hours of training in child development and 30 clock hours in management[,]	and at least three years of experience in a licensed child-care center or licensed or registered child-care home.

Figure 26 TAC §747.5407(e)

If the child is…	Being transported in this type of vehicle as specified in §747.5403(b) of this chapter (relating to What type of vehicle may I use to transport children?)…	Then the child must be secured in…
(1) An infant or toddler through at least 2 years of age	All vehicles	A rear-facing only child safety seat or a convertible child safety seat used rear facing for as long as possible, until the child reaches the highest weight or height allowed by the child safety seat manufacturer
(2) 2 years of age and older and within the weight and height limit of the rear or forward-facing child safety seat	All vehicles	A rear or forward-facing child safety seat with a harness for as long as possible, until the child reaches the highest weight or height allowed by the child safety seat manufacturer
(3) 4 years of age and within the weight and height limit of the forward-facing child safety seat	(A) General purpose vehicle and small school bus	A forward-facing child safety seat with a harness, a safety vest, or harness according to the manufacturer's instructions
(3) 4 years of age and within the weight and height limit of the forward-facing child safety seat	(B) Large school bus	A safety restraint system according to the vehicle manufacturer's instruction
(4) 4 through 7 years of age, has outgrown the weight or height limit of the forward-facing child safety seat, and is less than 4 feet, 9 inches in height; or 4 through 7 years of age,	(A) General purpose vehicle	A belt-positioning booster seat, safety vest, or harness according to the manufacturer's instructions

has outgrown the weight or height limit of the forward-facing child safety seat, and is 4 feet, 9 inches in height or taller, but cannot be properly secured by the lap and shoulder portions of the vehicle safety belt		
(4) 4 through 7 years of age, has outgrown the weight or height limit of the forward-facing child safety seat, and is less than 4 feet, 9 inches in height; or 4 through 7 years of age, has outgrown the weight or height limit of the forward-facing child safety seat, and is 4 feet, 9 inches in height or taller, but cannot be properly secured by the lap and shoulder portions of the vehicle safety belt	(B) Small school bus	A properly fitting safety belt anywhere the child sits in the vehicle
(4) 4 through 7 years of age, has outgrown the weight or height limit of the forward-facing child safety seat, and is less than 4 feet, 9 inches in height; or 4 through 7 years of age, has outgrown the weight or height limit of the forward-facing child safety seat, and is 4 feet, 9 inches in height or taller, but cannot be properly secured by the lap and shoulder portions of the vehicle safety belt	(C) Large school bus	A safety restraint system according to the vehicle manufacturer’s instruction
(5) 4 through 7 years of age, has outgrown the	(A) General purpose vehicle and small school	A properly fitting safety belt anywhere the child

weight or height limit of the forward-facing child safety seat, can be properly secured by the lap and shoulder portions of the vehicle safety belt, and is 4 feet, 9 inches in height or taller	bus	sits in the vehicle
(5) 4 through 7 years of age, has outgrown the weight or height limit of the forward-facing child safety seat, can be properly secured by the lap and shoulder portions of the vehicle safety belt, and is 4 feet, 9 inches in height or taller	(B) Large school bus	A safety restraint system according to the vehicle manufacturer’s instruction
(6) 8 through 12 years of age, and is less than 4 feet, 9 inches in height; or 8 through 12 years of age and is 4 feet, 9 inches in height or taller, but cannot be properly secured by the lap and shoulder portions of the vehicle safety belt	(A) General purpose vehicle	A belt-positioning booster seat, safety vest, or harness according to the manufacturer's instructions
(6) 8 through 12 years of age, and is less than 4 feet, 9 inches in height; or 8 through 12 years of age and is 4 feet, 9 inches in height or taller, but cannot be properly secured by the lap and shoulder portions of the vehicle safety belt	(B) Small school bus	A properly fitting safety belt anywhere the child sits in the vehicle
(6) 8 through 12 years of age, and is less than 4 feet, 9 inches in height; or	(C) Large school bus	A safety restraint system according to the vehicle manufacturer’s instruction

8 through 12 years of age and is 4 feet, 9 inches in height or taller, but cannot be properly secured by the lap and shoulder portions of the vehicle safety belt		
(7) 8 through 12 years of age, can be properly secured by the lap and shoulder portions of the vehicle safety belt, and is 4 feet, 9 inches in height or taller	(A) General purpose vehicle and small school bus	A properly fitting safety belt anywhere the child sits in the vehicle
(7) 8 through 12 years of age, can be properly secured by the lap and shoulder portions of the vehicle safety belt, and is 4 feet, 9 inches in height or taller	(B) Large school bus	A safety restraint system according to the vehicle manufacturer’s instruction
(8) 12 through 14 years of age	(A) General purpose vehicle and small school bus	A properly fitting safety belt anywhere the child sits in the vehicle;
(8) 12 through 14 years of age	(B) Large school bus	A safety restraint system according to vehicle manufacturer's instruction.

Figure: §31 TAC §65.81(1)(C)

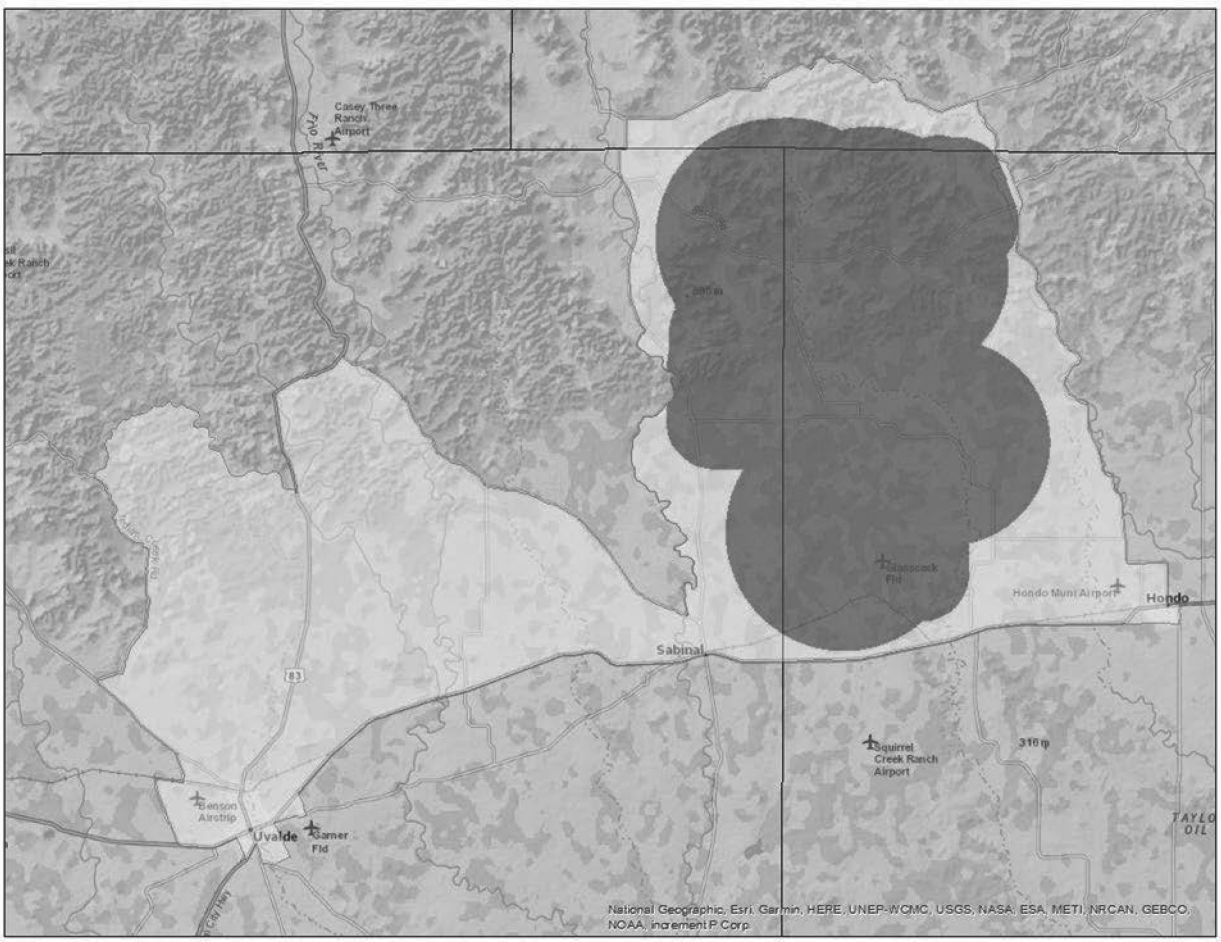
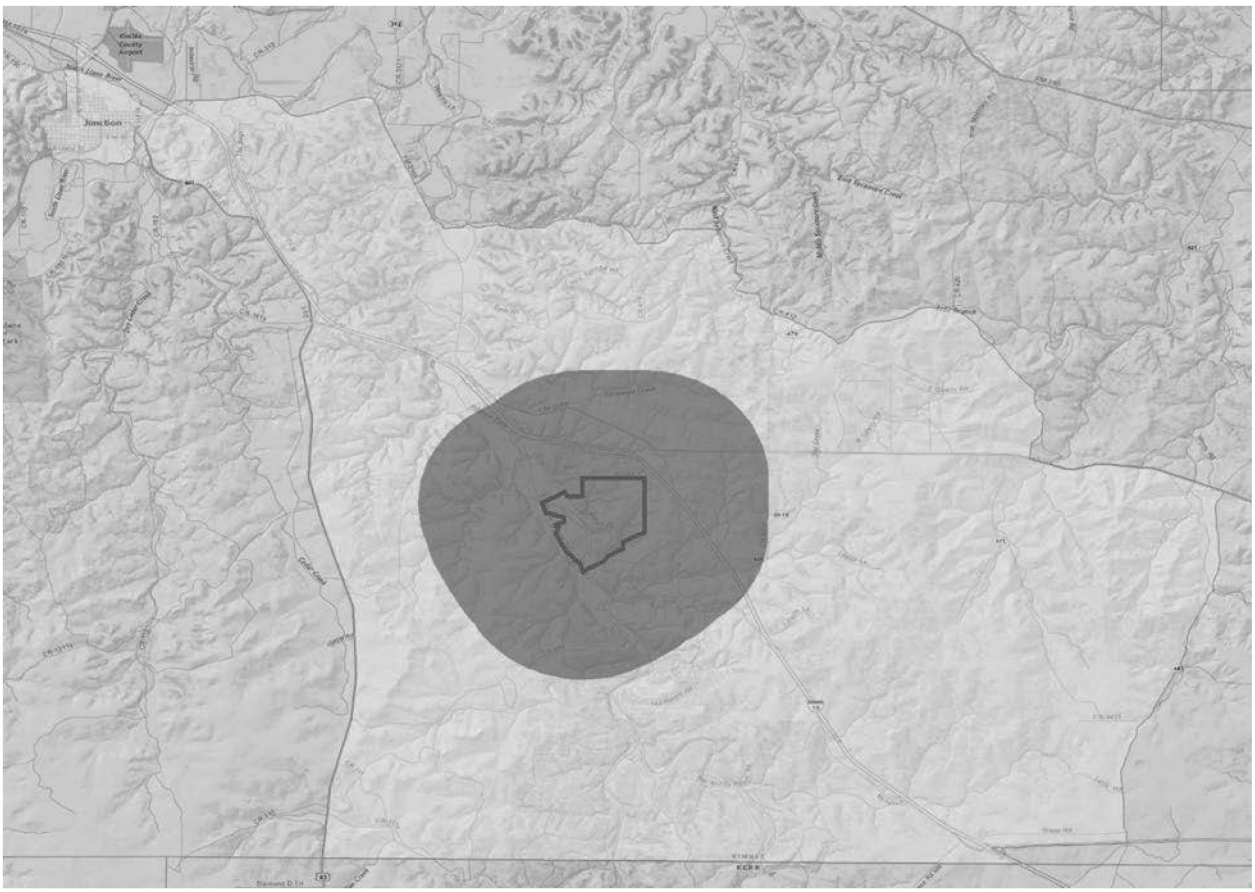


Figure: 31 TAC §65.85(1)(F)



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/12/22 - 09/18/22 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/12/22 - 09/18/22 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and 303.009[3] for the period of 09/01/22 - 09/30/22 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 09/01/22 - 09/30/22 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-202203611
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 7, 2022

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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 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/19/22 - 09/25/22 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/19/22 - 09/25//22 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.

TRD-202203685
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 13, 2022

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code, (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 24, 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 **October 24, 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: Baldemar J Maldonado; DOCKET NUMBER: 2022-0837-WOC-E; IDENTIFIER: RN111484465; LOCATION: Roscoe, Nolan County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Corinna Willis, (512) 239-2504; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(2) COMPANY: Benchmark Materials, LLC; DOCKET NUMBER: 2021-1072-WQ-E; IDENTIFIER: RN107994949; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Ellen Ojeda, (512) 755-6327; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401-0318, (361) 881-6900.

(3) COMPANY: Betts 1 Stop, Incorporated dba Alamo Drive Inn; DOCKET NUMBER: 2022-0613-PST-E; IDENTIFIER: RN102489119; LOCATION: Alamo, Hidalgo County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner

which will detect a release at a frequency of at least once every 30 days; 30 TAC §334.72, by failing to report suspected releases to the agency within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate and confirm all suspected releases of regulated substances requiring reporting under 30 TAC §334.72 within 30 days; PENALTY: $18,026; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(4) COMPANY: City of Beeville; DOCKET NUMBER: 2022-0825-WQ-E; IDENTIFIER: RN103991279; LOCATION: Beeville, Bee County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401-0318, (361) 825-3100.

(5) COMPANY: City of Bertram; DOCKET NUMBER: 2020-0676-MWD-E; IDENTIFIER: RN101386548; LOCATION: Bertram, Burnet County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and TCEQ Permit Number WQ0011669001, Effluent Limitations and Monitoring Requirements A, by failing to comply with permitted effluent limitations; and 30 TAC §317.4(a)(8) and §317.7(i), by failing to provide a backflow prevention device or a double-check backflow preventer at a water connection from a public water supply system to a wastewater treatment facility, and failing to provide atmospheric vacuum breakers at all potable water washdown hoses; PENALTY: $13,125; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $10,500; ENFORCEMENT COORDINATOR: Ellen Ojeda, (512) 239-2581; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(6) COMPANY: City of Seymour; DOCKET NUMBER: 2021-0085-PWS-E; IDENTIFIER: RN101405660; LOCATION: Seymour, Baylor County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.44(d)(2), by failing to provide increased pressure by means of booster pumps taking suction from ground storage tanks or obtain an exception by acquiring plan approval from the Executive Director for a booster pump taking suction from the distribution lines; PENALTY: $1,702; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $1,362; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(7) COMPANY: Construction Zone of DFW L.L.C.; DOCKET NUMBER: 2022-0819-WQ-E; IDENTIFIER: RN107936874; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: Earth Haulers Inc; DOCKET NUMBER: 2022-0851-WQ-E; IDENTIFIER: RN109238402; LOCATION: Euless, Tarrant County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 2309 Gravel Drive, Forth Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Galveston County Water Control and Improvement District 8; DOCKET NUMBER: 2022-0826-WQ-E; IDENTIFIER: RN102286341; LOCATION: Santa Fe, Galveston County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: HARTLEY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2021-1529-PWS-E; IDENTIFIER: RN101441152; LOCATION: Hartley, Hartley County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(e)(2), (h), and (i)(3), and §290.122(c)(2)(A) and (f), 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 executive director (ED) for the January 1, 2020 - June 30, 2020, July 1, 2020 - December 31, 2020, and January 1, 2021 - June 30, 2021, monitoring periods, and failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to conduct water quality parameter sampling at each of the facility's entry points and the required distribution sample sites for the January 1, 2020 - June 30, 2020, monitoring period; 30 TAC §290.117(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 ED for the July 1, 2020 - December 31, 2020, and January 1, 2021 - June 30, 2021, monitoring periods; 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed in a manner consistent with TCEQ requirements for the July 1, 2020 - December 31, 2020, monitoring period; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2018 - June 30, 2018, and the July 1, 2018 - December 31, 2018, monitoring periods; PENALTY: $3,986; ENFORCEMENT COORDINATOR: America Ruiz, (512) 239-2601; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(11) COMPANY: Motiva Chemicals LLC; DOCKET NUMBER: 2021-1461-AIR-E; IDENTIFIER: RN100217389; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Flexible Permit Numbers 16989 and PSDTX794, Special Conditions Number 1, Federal Operating Permit Number O1317, General Terms and Conditions and Special Terms and Conditions Number 23, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $52,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $26,125; ENFORCEMENT COORDINATOR: Kate Dacy, (512) 239-4593; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(12) COMPANY: POTAC, LLC; DOCKET NUMBER: 2021-1194-AIR-E; IDENTIFIER: RN100214188; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(1) and (2), Federal Operating Permit Number O2089, General Terms and Conditions and Special Terms and Conditions Number 16, and Texas Health and Safety Code, §382.085(b), by failing to certify compliance with the terms and conditions of the permit for at least each 12-month period following initial permit issuance, and failing to submit a permit compliance certifica-

tion within 30 days of any certification period; PENALTY: $4,650; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401-0318, (361) 881-6900.

(13) COMPANY: Richard Abbuhl; DOCKET NUMBER: 2022-0859-WOC-E; IDENTIFIER: RN103285243; LOCATION: Murchison, Henderson County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Corinna Willis, (512) 239-2504; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(14) COMPANY: Scott Brooks; DOCKET NUMBER: 2022-0804-WOC-E; IDENTIFIER: RN111435723; LOCATION: Murchison, Henderson County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Devin Mendoza, (512) 239-1832; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 757001-3734, (903) 535-5100.

(15) COMPANY: Sunoco, LLC dba Mertzon Bulk Plant; DOCKET NUMBER: 2021-1254-PST-E; IDENTIFIER: RN101694164; LOCATION: Mertzon, Irion County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.42(i) and TWC, §26.3475(c)(2), by failing to inspect all sumps, manways, overspill containers, and catchment basins of an underground storage tank (UST) system at least once every 60 days to ensure that their sides, bottoms, and any penetration points are maintained liquid-tight and free of any liquid or debris; 30 TAC §334.49(c)(2)(C) and TWC, §26.3475(d), by failing to inspect the impressed corrosion protection system for the UST system at least once every 60 days to ensure the rectifier and other system components are operating properly; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases in a manner which will detect a release at a frequency of at least once every 30 days; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; 30 TAC §334.74, by failing to investigate and confirm all suspected releases of regulated substances requiring reporting under 30 TAC §334.72 within 30 days; and 30 TAC §334.603(b)(2), by failing to maintain a current and correct list of all Class C Operators who have been trained for the facility; PENALTY: $29,840; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

TRD-202203627
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: September 9, 2022

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Enforcement Orders

An agreed order was adopted regarding FRONTERA EXPRESS LIMITED LIABILITY COMPANY Docket No. 2020-0381-MSW-E on September 13, 2022 assessing $6,601 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting William Hogan, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Katco Vacuum Truck Service, L.P., Docket No. 2021-0384-MSW-E on September 13, 2022 assessing $3,150 in administrative penalties with $630 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Texas, Inc., Docket No. 2021-0733-MWD-E on September 13, 2022 assessing $4,688 in administrative penalties with $937 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 179 AFFORDABLE STORAGE RV WAREHOUSE, INC., Docket No. 2021-1076-PWS-E on September 13, 2022 assessing $3,250 in administrative penalties with $650 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Gregory Donnell, Administrator for the Estate of Catherine Odom Murray dba Shady Oaks Mobile Home Park, Docket No. 2021-1382-PWS-E on September 13, 2022 assessing $2,942 in administrative penalties with $587 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 1585 & Frankford / Discount RV Storage & Shop Rentals, Inc. and Wolfforth / Discount Storage, LLC, Docket No. 2021-1452-PWS-E on September 13, 2022 assessing $4,000 in administrative penalties with $800 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SUBI WICHITA CORPORATION dba Dollar Saver 9, Docket No. 2021-1577-PST-E on September 13, 2022 assessing $3,600 in administrative penalties with $720 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding John Robin Moody, Docket No. 2022-0025-PST-E on September 13, 2022 assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding BC MATERIALS, L.L.C., Docket No. 2022-0465-WQ-E on September 13, 2022 assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding BIG CREEK CONSTRUCTION, LTD., Docket No. 2022-0642-WR-E on September 13, 2022 assessing $350 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202203697

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 14, 2022

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Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility: Registration Application No. 40332 Aviso de Solicitud y Oportunidad para Pedir una Reunión Pública para una Nueva Planta de Residuos Sólidos Municipales: Solicitud de Registro No. 40332

Application. Nature Environmental & Marine Services, LLC, 18511 Beaumont Hwy, Houston, Texas 77049, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40332, to construct and operate a Type V (5AC) medical waste processing facility with autoclave. The proposed facility, Nature Environmental & Marine Services, will be located at 8713 Root St., three (3) miles west-northwest of the Corpus Christi International Airport in the southwest quadrant of the intersection of Root Street and Gilliam Street, Corpus Christi, Texas 78409, in Nueces County. The Applicant is requesting authorization to process, store, and transfer municipal solid waste that includes medical waste such as sharps waste, biohazardous waste, pathological waste, and non-medical waste such as trace chemotherapeutic waste. The registration application is available for viewing and copying at the Owen R. Hopkins Library at 3202 McKinzie Rd., Corpus 78410 and may be viewed online at https://natureenviro.com/crpmedapp.html. The following 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: https://arcg.is/150mKz1. For exact location, refer to application.

Alternative Language Notice. Alternative language notice in Spanish is available at www.tceq.texas.gov/goto/mswapps. La notificación en otro idioma en español está disponible en www.tceq.texas.gov/goto/mswapps.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. Written public comments or written requests for a public meeting must be submitted to the Office of the Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 30 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the registration number for this application, which is provided at the top of this notice.

Mailing List. If you submit public comments, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/ or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this registration application or the registration process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their webpage, www.tceq.texas.gov/goto/pep. General information regarding the TCEQ can be found on our website at www.tceq.texas.gov/. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Nature Environmental & Marine Services, LLC at the address stated above or by calling Ryan L. Freeman, Controller, at (936) 900- 2293.

Solicitud. Nature Environmental & Marine Services, LLC, 18511 Beaumont Hwy, Houston, Texas 77049, ha solicitado a la Comisión de Calidad Ambiental del Estado de Texas (TCEQ) el registro propuesto 40332, para construir y operar una instalación de procesamiento de desechos médicos Tipo V (5AC) con autoclave. La planta propuesta, Nature Environmental & Marine Services, estará ubicada en 8713 Root St., tres (3) millas al oeste-noroeste del Aeropuerto Internacional de Corpus Christi en el cuadrante suroeste de la intersección de Root Street and Gilliam Street en el Condado de Nueces. El Solicitante está pidiendo autorización para procesar, almacenar y transferir residuos sólidos municipales que incluyen residuos médicos como los residuos punzantes, los residuos con riesgo biológico, los residuos patológicos y los residuos no médicos como los "residuos quimioterapéuticos en trazas". La solicitud del registro está disponible para ver y copiar en Owen R. Hopkins Library at 3202 McKinzie Rd., Corpus 78410 y se puede ver en línea en https://natureenviro.com/crpmedapp.html. El siguiente enlace a un mapa electrónico de la ubicación general del sitio o planta se proporciona como cortesía pública y no forma parte de la solicitud o aviso: https://arcg.is/150mKz1. Para la ubicación exacta, consulte la solicitud.

Comentario Público/Reunión Pública. Usted puede presentar comentarios públicos o pedir una reunión pública sobre esta solicitud. Los comentarios públicos escritos o las peticiones escritas para una reunión pública deben ser presentados a la Oficina del Secretario Principal en la dirección incluida en la sección de información que se encuentra al final de este aviso. Si se celebra una reunión pública, los comentarios pueden hacerse oralmente en la reunión o ser presentados por escrito

antes de que cierre la reunión pública. El director ejecutivo llevará a cabo una reunión pública si lo solicita un miembro de la legislatura que represente el área general donde se ubicará el proyecto o si hay abundante interés público en el proyecto propuesto. El propósito de la reunión pública es que el público proporcione aportes para consideración por la comisión, y que el solicitante y el personal de la comisión brinden información al público. Una reunión pública no es una audiencia de caso impugnado. El director ejecutivo revisará y considerará los comentarios públicos y las peticiones escritas para una reunión pública que hayan sido presentadas durante el período de comentarios. El período de comentarios comenzará en la fecha de publicación de este aviso y terminará 30 días calendario después de la publicación de este aviso. El director ejecutivo no está obligado a presentar una respuesta a los comentarios.

Acción del Director Ejecutivo. El director ejecutivo deberá, después de revisar una solicitud de registro, determinar si la solicitud será aprobada o denegada en su totalidad o en parte. Si el director ejecutivo actúa sobra una solicitud, el secretario principal deberá mandar por correo o de otro modo transmitir un aviso de la acción y una explicación de la oportunidad de presentar una moción para anular la decisión del director ejecutivo. El secretario principal deberá enviar este aviso por correo al propietario y al operador, al abogado de interés público, a los propietarios de terrenos adyacentes como se muestra en el mapa de propiedad de tierras y la lista de terratenientes y a las personas que hayan oportunamente presentado comentarios públicos en respuesta al aviso público. No todas las personas en la lista de correos para este aviso recibirán la carta de aviso de la Oficina del Secretario Principal.

Información Disponible en Línea. Para detalles sobre el estado de la solicitud, visite la Base de Datos Integrada de los Comisionados (CID, por sus siglas en inglés) en www.tceq.texas.gov/goto/cid. Una vez que tenga acceso al CID usando el enlace anterior, ingrese el número de registro para esta solicitud, que se proporciona al inicio de este aviso.

Lista De Correo. Si presenta comentarios públicos, será añadido a la lista de correo de esta solicitud para recibir futuros avisos públicos enviados por la Oficina del Secretario Principal. Además, puede solicitar ser incluido en: (1) la lista de correo permanente para un específico nombre de solicitante y número de permiso y/o (2) la lista de correo de un condado especifico. Para ser incluido en la lista de correo permanente y/o del condado, especifique claramente qué lista(s) y envíe su solicitud a la Oficina de la Secretario Principal de la TCEQ a la dirección a continuación.

Contactos e Información de la Agencia. Todos los comentarios públicos y solicitudes deben presentarse electrónicamente en www14.tceq.texas.gov/epic/eComment/ o por escrito a la Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Por favor tenga en cuenta que cualquier información personal que usted proporcione, incluyendo su nombre, número de teléfono, dirección de correo electrónico y dirección física pasará a formar parte del registro público de la agencia. Para obtener más información sobre esta solicitud de registro o el proceso de registro, llame al Programa de Educación Pública de la TCEQ, sin costo, al (800) 687-4040 o visite su página web, www.tceq.texas.gov/goto/pep. If you would like information in English, you may call (800) 687-4040.

Se puede obtener información adicional de Nature Environmental & Marine Services en la dirección indicada en el inicio de este aviso o llamando a Ryan L. Freeman, Controlador, al +1 (936) 900-2293.

TRD-202203612

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 8, 2022

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Notice of Correction to Agreed Order Number 1

In the July 29, 2022, issue of the *Texas Register* (47 TexReg 4580), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 1, for Alan R. Truelove Jr.; Docket Number 2022-0709-WQ-E. The error is as submitted by the commission.

The reference to the Docket Number should be corrected to read: "2022-0709-WOC-E."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202203628

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Notice of Correction to Agreed Order Number 11

In the April 8, 2022, issue of the *Texas Register* (47 TexReg 1920), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 11, for Smokers' Express Wine & Spirits, LLC dba Snappys Express Mart; Docket Number 2021-1023-PST-E. The error is as submitted by the commission.

The reference to the penalty should be corrected to read: "$5,100."

For questions concerning the error, please contact Michael Parrish at (512) 239-2548.

TRD-202203629

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Notice of District Petition

Notice issued September 12, 2022

TCEQ Internal Control No. D-03302022-060; East Central Special Utility District of Bexar, Wilson, and Guadalupe Counties (the "District") filed an application with the Texas Commission on Environmental Quality (TCEQ) for authority to levy a revised impact fee of $3,806 per equivalent single-family connection within the District's service area. The Authority files this application under the authority of Chapter 395 of the Local Government Code, 30 Texas Administrative Code Chapter 293, and the procedural rules of the TCEQ. The purpose of impact fees is to generate revenue to recover the costs of capital improvements or facility expansions made necessary by and attributable to serving new development in the District's service area. At the direction of the District, a registered engineer has prepared a capital improvements plan (impact fee study) for the system that identifies the capital improvements or facility expansions and their costs for which the impact fees will be assessed. The impact fee application and supporting information are available for inspection and copying during regular business hours in the Districts Section of the Water Supply Division, Third Floor of Building F (in the TCEQ Park 35 Office Complex located between Yager and Braker lanes on North IH-35), 12100 Park 35 Circle, Austin, Texas 78753. A copy of the impact fee application and supporting information, as well as the capital improvements plan, is available for inspection and copying at the District's office during regular business hours.

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202203656
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 12, 2022

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Notice of District Petition

Notice issued September 12, 2022

TCEQ Internal Control No. D-07202022-035; Diecieseis, LLC, a Texas limited liability company and Continental Homes of Texas, LP, a Texas limited partnership (Petitioners) filed a petition for creation of East Hays County Municipal Utility District No. 2 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) Diecieseis, LLC holds title to a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Continental Homes of Texas, LP, a Texas limited partnership, on the property to be included in the proposed District and application material indicates that the lienholder consents to the creation of the proposed District; (3) the proposed District will contain approximately 589.791 acres located within Hays County, Texas; and (4) all of the land within the proposed District is wholly within the extraterritorial jurisdiction of the City of Kyle, Texas. By Resolution No. 1276, passed and adopted on February 1, 2022, the City of Kyle, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve, and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend such additional facilities, including roads, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $70,430,000 ($64,530,000 for water, wastewater, and drainage plus $5,900,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202203657
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 12, 2022

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Notice of Public Hearings and Opportunity for Comment on the Edwards Aquifer Protection Program

The Texas Commission on Environmental Quality (TCEQ or commission) conducts annual public hearings to receive comments from the public on actions the commission should take to protect the Edwards Aquifer from pollution, as required under Texas Water Code, §26.046. These annual public hearings are held by the Edwards Aquifer Protection Program and cover the TCEQ rules, found at Title 30, Texas Administrative Code, Chapter 213, which regulate development over the delineated contributing, recharge, and transition zones of the Edwards Aquifer. These annual public hearings assist the commission in its shared responsibility with local governments, such as cities, counties, and groundwater conservation districts, to protect the water quality of the aquifer. In addition to receiving comments, agency staff will provide an update on application process improvements and electronic records management.

This year the hearings will be conducted in person in two locations, the TCEQ Headquarters in Austin and the TCEQ San Antonio Regional Office. The hearing in Austin will be at the TCEQ Headquarters located at 12100 Park 35 Circle, Austin, Texas 78753 on **Tuesday, October 18, 2022** and begin at 10:00 a.m. in Building A, Room 172. The hearing in San Antonio will be at the TCEQ San Antonio Regional Office located at 14250 Judson Road, San Antonio, Texas 78233-4480 on **Thursday, October 20, 2022** and begin at 10:00 a.m.

Persons with disabilities who need special accommodations at the hearings should call the Office of the Chief Clerk at (512) 239-3300 or 1-800-RELAY-TX (TDD) at least five business days prior to the scheduled hearings.

The hearings will be structured for the receipt of oral or written comments by interested persons. There will be no open question and answer discussion during the hearing; however, agency staff members will be available to answer questions 30 minutes prior to and 30 minutes after the conclusion of the hearing. All other comments must be made in writing and must be received by TCEQ no later than **5:00 p.m., Friday, October 21, 2022.**

Written comments submitted before or after the hearing should reference the Edwards Aquifer Protection Program and may be sent to Ms. Lillian Butler, Texas Commission on Environmental Quality, Austin Region, MC R11, P.O. Box 13087, Austin, Texas 78711-3087 or emailed to *eapp@tceq.texas.gov.* For further information or questions concerning these hearings, please contact Ms. Butler, or visit: ***https://www.tceq.texas.gov/permitting/eapp/history.html.***

TRD-202203687
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: September 13, 2022

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Notice of Public Meeting for Disposal of Sewage Sludge and Water Treatment Plant Residuals Permit Renewal: Permit No. WQ0004636000 Aviso de Reunión Pública para la Eliminación de Lodos de Aguas Residuales y Residuos de Plantas de Tratamiento de Agua Permiso Renovación: Permiso No. WQ0004636000

APPLICATION. GCC Sun City Materials, LLC, 1 McKelligon Canyon Road, El Paso, Texas 79930 has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004636000 (EPA I.D. No. TXL005012), which authorizes the disposal of wastewater treatment plant sewage sludge and water treatment plant residuals on 142 acres. This permit will not authorize a discharge of pollutants into water in the state.

The disposal unit is located 3.3 miles east of the intersection of Gary Lee and Hueco Ranch Road, at the eastern end of Gary Lee Road, in Hudspeth County, Texas 79938. The disposal unit is located within the drainage basin of the Rio Grande Below Riverside Diversion Dam in Segment No. 2307 of the Rio Grande Basin.

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. This link to an electronic map of the facility's location is provided as a public courtesy and 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=-105.902222%2C31.881944&level=12

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:

Monday, October 17, 2022 at 6:00 P.M. (Mountain Time)

Desert Haven Fire Department

5541 US HWY 62/180

Desert Haven, Texas 79938

INFORMATION. Members of the public 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 www.tceq.texas.gov/goto/comment. 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 website at https://www.tceq.texas.gov.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Hudspeth County Courthouse, 109 Millican Street, Sierra Blanca, Texas. Further information may also be obtained from GCC Sun City Materials, LLC at the address stated above or by calling Mr. Octavio Holguin at (915) 564-1653.

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: September 09, 2022

SOLICITUD. GCC Sun City Materials, LLC, 1 McKelligon Canyon Road, El Paso, Texas 79930 ha solicitado a la Comisión de Calidad Ambiental de Texas (TCEQ, por sus siglas en inglés) una renovación del Sistema de Eiminación de Descargas de Contaminantes de Texas del Permiso N.º WQ0004636000 (EPA I.D. N.º TXL005012), que autoriza la eliminación de lodos de plantas de tratamiento de aguas residuales y plantas de tratamiento de agua en 142 acres. Este permiso no autorizará una descarga de contaminantes en el agua en el estado.

La unidad de eliminación se encuentra a 3.3 millas al este de la intersección de Gary Lee y Hueco Ranch Road, en el extremo este de Gary Lee Road, en el Condado de Hudspeth, Texas 79938. La unidad de eliminación está ubicada dentro de la cuenca de drenaje de la presa de desviación Río Grande Below Riverside en el Segmento N.º 2307 de la Cuenca del Río Grande.

El Director Ejecutivo de la TCEQ ha concluido el examen técnico de la solicitud y ha preparado un bosquejo de permiso. El bosquejo de permiso, de ser aprobado, establecería las condiciones bajo las cuales la instalación debe operar. El Director Ejecutivo ha tomado la decisión preliminar de que este permiso, si se emite, cumple con todos los requisitos legales y reglamentarios. Este enlace a un mapa electrónico de la ubicación de la instalación se proporciona como cortesía pública y no como parte de la solicitud o aviso. Para conocer la ubicación exacta, consulte la solicitud. https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-105.902222%2C31.881944&level=12

COMENTARIO PÚBLICO / REUNIÓN PÚBLICA. Se convocará una reunión pública que constará de dos partes, un periodo de debate informal y un periodo de comentarios formales. Una reunión pública no es una audiencia de caso impugnado en virtud de la Ley de Procedimiento Administrativo. Durante el Periodo de Discusión Informal, se alentará al público a hacer preguntas al solicitante y al personal de la TCEQ sobre la solicitud de permiso. Los comentarios y preguntas presentados oralmente durante el Periodo de Discusión Informal no se considerarán antes de que se tome una decisión sobre la solicitud de permiso y no se dará una respuesta formal. Las respuestas se proporcionarán oralmente durante el periodo de debate informal. Durante el Periodo de Comentarios Formales sobre la solicitud de permiso, los miembros del público pueden declarar sus comentarios formales oralmente en el registro oficial. El Director Ejecutivo preparará una respuesta por escrito a todos los comentarios oportunos, pertinentes y materiales o significativas. Todos los comentarios formales serán considerados antes de que se tome una decisión sobre la solicitud de permiso. Se enviará una copia de la respuesta escrita a cada persona que envíe un comentario formal o que solicite estar en la lista de correo para esta solicitud de permiso y proporcione una dirección postal. Solo se pueden considerar las cuestiones relevantes y materiales planteadas durante el Periodo de Comentarios Formales si se concede una audiencia de caso impugnado en esta solicitud de permiso.

La Reunión Pública se llevará a cabo:

Lunes, 17 de octubre del 2022 a las 6:00 P.M. (Tiempo de la Montaña)

Desert Haven Fire Department

5541 US HWY 62/180

Desert Haven, Texas 79938

INFORMACIÓN. Se alienta a los miembros del público a enviar comentarios por escrito en cualquier momento durante la reunión o por correo antes del cierre del periodo de comentarios públicos a Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 o electrónicamente a www.tceq.texas.gov/goto/comment. Si necesita más información sobre la solicitud de permiso o el proceso de permisos, llame al Programa de Educación Pública de la TCEQ, línea gratuita, al (800) 687-4040. *Si desea información en Español, puede llamar (800) 687-4040.* Puede encontrar información general sobre la TCEQ en nuestro sitio web en https://www.tceq.texas.gov.

La solicitud de permiso, la decisión preliminar del Director Ejecutivo y el bosquejo del permiso están disponibles para ver y copiar en el Palacio de Justicia del Condado de Hudspeth, 109 Millican Street, Sierra Blanca, Texas. También se puede obtener más información de GCC Sun City Materials, LLC en la dirección indicada anteriormente o llamando al Sr. Octavio Holguin al (915) 564-1653.

Las personas con discapacidades que necesiten acomodaciones especiales en la reunión deben llamar a la Oficina del Secretario Principal al (512) 239-3300 o (800) RELAY-TX (TDD) al menos cinco días hábiles antes de la reunión.

Fecha de Emisión: 09 de septiembre del 2022

TRD-202203617
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 9, 2022

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Notice of Water Quality Application

The following notice was issued on September 8, 2022.

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN 10 DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

The Texas Commission on Environmental Quality has initiated a minor modification of the Texas Pollutant Discharge Elimination System permit issued to City of Dallas, 1500 Marilla Street, Room 4AN, Dallas, Texas 75201, to change the annual sludge reporting due date from September 1st of each year to September 30th of each year. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 110,000,000 gallons per day. The facility is located at 10011 Log Cabin Road, in the City of Dallas, Dallas County, Texas 75253.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our website at www.TCEQ.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-202203616
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 8, 2022

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Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Scarlett Scalzo at (512) 463-5800.

Deadline: Monthly Report due July 5, 2022 for Committees

Joell C. Adams, Texas Association of Business PAC, 316 W. 12th St. Ste. 200, Austin Texas 78701

Perry L. Fowler, Texas Water Infrastructure Network Political Action Committee, PO Box 10062, Austin Texas 78766

David E. Burge, Conroe Police Officers Association, 1775 Dabney Bottom Road, Cleveland Texas 77328

Ryan D. Nielsen, Mesquite Police Association PAC, 924 Windbell Cir., Mesquite Texas 75149

Grant R. Cottingham, Frisco Police Officers Association Political Action Committee, PO Box 2263, Frisco Texas 75034

Albert Hunter, Bosque Democratic Club, PO Box 291, Meridian Texas 76665

Richard Faulkner, Texas Women Defending Roe PAC, 12770 Coit Rd., Ste. 720, Dallas Texas 75251

Deadline: Monthly Report due June 6, 2022 for Committees

Jennifer B. Briggs, Texas Society of Architects Committee, 500 Chicon St., Austin Texas 78702

Blake C. Bearden, Round Rock Police Officers Association Political Action Committee, PO Box 6273, Round Rock Texas 78683 **(AG)**

Sally A. McFeron, Better Together Project, PO Box 722, Liberty Hill Texas 78642 **(AG)**

Steve Oglesby, Bowie County Patriots, PO Box 55, Nash Texas 75569 **(AG)**

Stephen Foster, CURO Financial Technologies Corp Political Action Committee, 3615 N. Ridge Road, Wichita Kansas 67205

Deadline: Monthly Report due May 5, 2022 for Committees

Blake C. Bearden, Round Rock Police Officers Association Political Action Committee, PO Box 6273, Round Rock Texas 78683 **(AG)**

Sally A. McFeron, Better Together Project, PO Box 722, Liberty Hill Texas 78642 **(AG)**

Steve Oglesby, Bowie County Patriots, PO Box 55, Nash Texas 75569 **(AG)**

Deadline: Monthly Report due April 5, 2022 for Committees

Blake C. Bearden, Round Rock Police Officers Association Political Action Committee, PO Box 6273, Round Rock Texas 78683 **(AG)**

Sally A. McFeron, Better Together Project, PO Box 722, Liberty Hill Texas 78642 **(AG)**

Steve Oglesby, Bowie County Patriots, PO Box 55, Nash Texas 75569 **(AG)**

TRD-202203624
Aidan Shaughnessy
Program Specialist
Texas Ethics Commission
Filed: September 9, 2022

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Texas Department of Insurance

Company Licensing

Application for incorporation in the state of Texas for Harbor Health Insurance Company, a domestic life, accident and/or health company. The home office is in Austin, Texas.

Application for Dairyland American Insurance Company, a foreign fire and/or casualty company, to change its name to Point Specialty Insurance Company. The home office is in Stevens Point, Wisconsin.

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, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202203698
Justin Beam
Chief Clerk
Texas Department of Insurance
Filed: September 13, 2022

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Notice of Hearing TWIA Adjustments to Maximum Liability Limits DOCKET NO. 2835

NOTICE OF PUBLIC HEARING

TWIA Adjustments to Maximum Liability Limits

DOCKET NO. 2835

The Texas Windstorm Insurance Association (TWIA) made its annual filing for proposed adjustments to its maximum liability limits on August 5, 2022. The proposed adjustments would apply to windstorm and hail insurance policies delivered, issued for delivery, or renewed on or after January 1, 2023. **This filing is not a rate filing.**

By statute, the proposed adjustments are subject to review and either approval, disapproval, or modification by the Texas Department of Insurance (TDI). The proposed adjustments were modified by the department in an order issued on September 2, 2022. Texas Insurance Code §2210.504 requires the Commissioner to give notice and hold a hearing before deciding whether to finally approve, disapprove, or modify the proposed adjustment within 30 days of the initial order of modification.

The Commissioner will hold a public hearing to consider TWIA's petition for adjustments to maximum liability limits under Docket No. 2835. The hearing will begin at 2:00 p.m., central time, on September 27, 2022, in Room 100 of the William P. Hobby State Office Building, 333 Guadalupe Street, Austin, Texas.

How to review, request copies, and comment:

To **review** or get copies of TDI's order of modification or TWIA's proposed adjustments to its maximum liability limits filings:

--Online: Go to tdi.texas.gov/submissions/indextwia.html#limit

--In person: You can review the filing in the Office of the Chief Clerk, Texas Department of Insurance, 1601 Congress Avenue, Austin, Texas 78701. If you would like to review the materials in person, please email ChiefClerk@tdi.texas.gov to arrange a time.

--By mail: Write to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

Written comments must be received by TDI on or before 5:00 p.m., central time, on September 27, 2022. Please include the docket number on any comments or exhibits. Submit your comments by mail to

the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030 or by email to ChiefClerk@tdi.texas.gov.

TRD-202203686
James Person
General Counsel
Texas Department of Insurance
Filed: September 13, 2022

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Texas Lottery Commission

Scratch Ticket Game Number 2453 "TRIPLE 777"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2453 is "TRIPLE 777". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2453 shall be $2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2453.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 08, 09, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 7 SYMBOL, 77 SYMBOL, 777 SYMBOL, $2.00, $3.00, $6.00, $9.00, $10.00, $20.00, $30.00, $60.00, $100, $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. 2453 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
18	ETN
19	NTN
20	TWY

21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
7 SYMBOL	WIN$
77 SYMBOL	DBL
777 SYMBOL	TRP
$2.00	TWO$
$3.00	THR$
$6.00	SIX$
$9.00	NIN$
$10.00	TEN$
$20.00	TWY$
$30.00	TRTY$
$60.00	SXTY$
$100	ONHN
$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 (2453), 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: 2453-0000001-001.

H. Pack - A Pack of the "TRIPLE 777" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "TRIPLE 777" Scratch Ticket Game No. 2453.

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 777" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty-two (22) Play Symbols. If a player matches any of 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 "7" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a "77" Play Symbol, the player wins DOUBLE the prize for that symbol. If the player reveals a "777" Play Symbol, the player wins TRIPLE the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly twenty-two (22) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly twenty-two (22) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the twenty-two (22) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twenty-two (22) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to ten (10) times.

D. On winning and Non-Winning Tickets, the top cash prizes of $1,000 and $30,000 will each appear exactly once, except on Tickets winning ten (10) times and with respect to other parameters, play action or prize structure.

E. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

F. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

G. Tickets winning more than one (1) time will use both WINNING NUMBERS Play Symbols to create matches, unless restricted by other parameters, play action or prize structure.

H. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

I. All YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., $2 and 02, $3 and 03, $6 and 06, $9 and 09, $10 and 10 and $20 and 20).

J. On all Tickets, a Prize Symbol will not appear more than one (1) time, except as required by the prize structure to create multiple wins.

K. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

L. The "7" (WIN$) Play Symbol will never appear more than once on a Ticket.

M. The "7" (WIN$) Play Symbol will win the prize for that Play Symbol.

N. The "7" (WIN$) Play Symbol will never appear on a Non-Winning Ticket.

O. The "7" (WIN$) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

P. The "7" (WIN$) Play Symbol will never appear on the same Ticket as the "77" (DBL) or "777" (TRP) Play Symbols.

Q. The "77" (DBL) Play Symbol will never appear more than once on a Ticket.

R. The "77" (DBL) Play Symbol will win DOUBLE the prize for that Play Symbol and will win as per the prize structure.

S. The "77" (DBL) Play Symbol will never appear on a Non-Winning Ticket.

T. The "77" (DBL) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

U. The "777" (TRP) Play Symbol will never appear more than once on a Ticket.

V. The "777" (TRP) Play Symbol will win TRIPLE the prize for that Play Symbol and will win as per the prize structure.

W. The "777" (TRP) Play Symbol will never appear on a Non-Winning Ticket.

X. The "777" (TRP) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

Y. The "77" (DBL) and "777" (TRP) Play Symbols can appear together on the same Ticket as per the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "TRIPLE 777" Scratch Ticket Game prize of $2.00, $3.00, $6.00, $9.00, $10.00, $18.00, $20.00, $30.00, $60.00 or $100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $60.00 or $100 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TRIPLE 777" 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 777" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "TRIPLE 777" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "TRIPLE 777" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2453. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2453 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2.00	710,400	10.14
$3.00	316,800	22.73
$6.00	316,800	22.73
$9.00	163,200	44.12
$10.00	19,200	375.00
$18.00	57,600	125.00
$20.00	57,600	125.00
$30.00	9,700	742.27
$60.00	7,800	923.08
$100	2,880	2,500.00
$1,000	15	480,000.00
$30,000	6	1,200,000.00

*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 4.33. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2453 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. 2453, 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-202203652
Bob Biard
General Counsel
Texas Lottery Commission
Filed: September 12, 2022

♦ ♦ ♦

Scratch Ticket Game Number 2460 "$100,000,000 RICHES!"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2460 is "$100,000,000 RICHES!". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2460 shall be $20.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2460.

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: BOAT SYMBOL, LEMON SYMBOL, HORSESHOE SYMBOL, MOON SYMBOL, PIGGYBANK SYMBOL, RING SYMBOL, STAR SYMBOL, GOLD BAR SYMBOL, WALLET SYMBOL, KEY SYMBOL, DIAMOND SYMBOL, HAT SYMBOL, LIGHT-

NING BOLT SYMBOL, BANANA SYMBOL, CLOVER SYMBOL, ANCHOR SYMBOL, CHERRY SYMBOL, SUN SYMBOL, HEART SYMBOL, BOOT SYMBOL, RAINBOW SYMBOL, MELON SYMBOL, DICE SYMBOL, BELL SYMBOL, WISHBONE SYMBOL, CACTUS SYMBOL, HORSE SYMBOL, HORSESHOE SYMBOL, UMBRELLA SYMBOL, GRAPES SYMBOL, COIN SYMBOL, PINEAPPLE SYMBOL, DAISY SYMBOL, 01, 02, 03, 04, 05, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, STACK OF CASH SYMBOL, 10X SYMBOL, 20X SYMBOL, $20.00, $25.00, $50.00, $75.00, $100, $200, $500, $1,000, $20,000 and $1,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2460 - 1.2D

PLAY SYMBOL	CAPTION
BOAT SYMBOL	BOAT
LEMON SYMBOL	LEMON
HORSESHOE SYMBOL	HRSHOE
MOON SYMBOL	MOON
PIGGYBANK SYMBOL	PIGBNK
RING SYMBOL	RING
STAR SYMBOL	STAR
GOLD BAR SYMBOL	BAR
WALLET SYMBOL	WALLET
KEY SYMBOL	KEY
DIAMOND SYMBOL	DIAMND
HAT SYMBOL	HAT
LIGHTNING BOLT SYMBOL	BOLT
BANANA SYMBOL	BANANA
CLOVER SYMBOL	CLOVER
ANCHOR SYMBOL	ANCHOR
CHERRY SYMBOL	CHERRY
SUN SYMBOL	SUN
HEART SYMBOL	HEART
BOOT SYMBOL	BOOT
RAINBOW SYMBOL	RNBOW
MELON SYMBOL	MELON
DICE SYMBOL	DICE
BELL SYMBOL	BELL
WISHBONE SYMBOL	WISHBN
CACTUS SYMBOL	CACTUS
HORSE SYMBOL	HORSE
UMBRELLA SYMBOL	UMBRLA

GRAPES SYMBOL	GRAPES
COIN SYMBOL	COIN
PINEAPPLE SYMBOL	PNAPLE
DAISY SYMBOL	DAISY
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI

30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX
57	FFSV
58	FFET
59	FFNI
60	SXTY

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 (2460), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2460-0000001-001.

H. Pack - A Pack of the "$100,000,000 RICHES!" Scratch Ticket Game contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The front of Ticket 001 will be shown on the front of the Pack; the back of Ticket 025 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 025 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "$100,000,000 RICHES!" Scratch Ticket Game No. 2460.

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 "$100,000,000 RICHES!" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose eighty-six (86) Play Symbols. $50 BONUS PLAY AREA: If a player reveals 2 matching Play Symbols in the $50 BONUS, the player wins $50. $75 BONUS PLAY AREA: If the player reveals 2 matching Play Symbols in the $75 BONUS, the player wins $75. $100 BONUS PLAY AREA: If the player reveals 2 matching Play Symbols in the $100 BONUS, the player wins $100. $200 BONUS PLAY AREA: If the player reveals 2 matching Play Symbols in the $200 BONUS, the player wins $200. $100,000,000 RICHES! PLAY AREA: If the player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "STACK OF CASH" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. If the player reveals a "20X" Play Symbol, the player wins 20 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 eighty-six (86) 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 eighty-six (86) 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 eighty-six (86) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the eighty-six (86) 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 de-

fective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to forty (40) times.

D. GENERAL: The "STACK OF CASH" (WIN$), "10X" (WINX10) and "20X" (WINX20) Play Symbols will never appear in the $50 BONUS, $75 BONUS, $100 BONUS or $200 BONUS play areas.

E. $50 BONUS: A non-winning $50 BONUS play area will have two (2) different Play Symbols.

F. $50 BONUS: Winning Tickets will contain two (2) matching Play Symbols in the $50 BONUS play area and will win $50.

G. $75 BONUS: A non-winning $75 BONUS play area will have two (2) different Play Symbols.

H. $75 BONUS: Winning Tickets will contain two (2) matching Play Symbols in the $75 BONUS play area and will win $75.

I. $100 BONUS: A non-winning $100 BONUS play area will have two (2) different Play Symbols.

J. $100 BONUS: Winning Tickets will contain two (2) matching Play Symbols in the $100 BONUS play area and will win $100.

K. $200 BONUS: A non-winning $200 BONUS play area will have two (2) different Play Symbols.

L. $200 BONUS: Winning Tickets will contain two (2) matching Play Symbols in the $200 BONUS play area and will win $200.

M. $100,000,000 RICHES!: No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

N. $100,000,000 RICHES!: A non-winning Prize Symbol will never match a winning Prize Symbol.

O. $100,000,000 RICHES!: On winning and Non-Winning Tickets, the top cash prizes of $1,000, $20,000 and $1,000,000 will each appear at least once, except on Tickets winning forty (40) times and with respect to other parameters, play action or prize structure.

P. $100,000,000 RICHES!: Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

Q. $100,000,000 RICHES!: No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

R. $100,000,000 RICHES!: All YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., $25 and 25 and $50 and 50).

S. $100,000,000 RICHES!: On all Tickets, a Prize Symbol will not appear more than five (5) times, except as required by the prize structure to create multiple wins.

T. $100,000,000 RICHES!: On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

U. $100,000,000 RICHES!: The "STACK OF CASH" (WIN$) Play Symbol will never appear on the same Ticket as the "10X" (WINX10) or "20X" (WINX20) Play Symbols.

V. $100,000,000 RICHES!: The "10X" (WINX10) Play Symbol will never appear more than once on a Ticket.

W. $100,000,000 RICHES!: The "10X" (WINX10) Play Symbol will win 10 TIMES the prize for that Play Symbol and will win as per the prize structure.

X. $100,000,000 RICHES!: The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

Y. $100,000,000 RICHES!: The "10X" (WINX10) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

Z. $100,000,000 RICHES!: The "20X" (WINX20) Play Symbol will never appear more than once on a Ticket.

AA. $100,000,000 RICHES!: The "20X" (WINX20) Play Symbol will win 20 TIMES the prize for that Play Symbol and will win as per the prize structure.

BB. $100,000,000 RICHES!: The "20X" (WINX20) Play Symbol will never appear on a Non-Winning Ticket.

CC. $100,000,000 RICHES!: The "20X" (WINX20) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

DD. $100,000,000 RICHES!: The "10X" (WINX10) and "20X" (WINX20) Play Symbols can appear on the same Ticket as per the prize structure.

EE. $100,000,000 RICHES!: The "STACK OF CASH" (WIN$) Play Symbol will win the prize for that Play Symbol.

FF. $100,000,000 RICHES!: The "STACK OF CASH" (WIN$) Play Symbol will never appear more than once on a Ticket.

GG. $100,000,000 RICHES!: The "STACK OF CASH" (WIN$) Play Symbol will never appear on a Non-Winning Ticket.

HH. $100,000,000 RICHES!: The "STACK OF CASH" (WIN$) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "$100,000,000 RICHES!" Scratch Ticket Game prize of $20.00, $25.00, $50.00, $75.00, $100, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $50.00, $75.00, $100, $200 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$100,000,000 RICHES!" Scratch Ticket Game prize of $1,000, $20,000 or $1,000,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that

prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$100,000,000 RICHES!" 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 "$100,000,000 RICHES!" 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 "$100,000,000 RICHES!" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 8,040,000 Scratch Tickets in Scratch Ticket Game No. 2460. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2460 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$20.00	771,840	10.42
$25.00	257,280	31.25
$50.00	514,560	15.63
$75.00	257,280	31.25
$100	321,600	25.00
$200	71,020	113.21
$500	5,360	1,500.00
$1,000	280	28,714.29
$20,000	20	402,000.00
$1,000,000	4	2,010,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.66. 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. 2460 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. 2460, 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-202203653
Bob Biard
General Counsel
Texas Lottery Commission
Filed: September 12, 2022

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Public Utility Commission of Texas

Notice of Application to Relinquish Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on September 12, 2022, to relinquish a designation as an eligible telecommunications carrier (ETC) in Texas under 47 U.S.C. § 214(e) and 16 Texas Administrative Code §26.418.

Docket Title and Number: Application of Monster Broadband, Inc. to Relinquish its Designation as an Eligible Telecommunications Carrier, Docket Number 54056.

The Application: Monster Broadband, Inc. requests to relinquish its eligible telecommunications carrier (ETC) designation in Texas. Monster Broadband, Inc. also requests that the Commission waive the requirements under 16 Texas Administrative Code §26.418(j)(1)(A), to permit Monster Broadband, Inc. to relinquish its ETC designation without requiring 90 days prior notice.

Persons who wish to file a motion to intervene or comments on the application should contact the commission no later than October 11, 2022, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 54056.

TRD-202203688

Andrea Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 13, 2022

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Office of Public Utility Counsel

Notice of Annual Public Hearing

Pursuant to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated § 13.064, the Office of Public Utility Counsel (OPUC) will conduct its annual public hearing in person, virtually and via toll free conference call on:

October 27th from 1:00 - 3:00 p.m.

Attend in person:

One AISD Building

241 Pine Street

Abilene, Texas 79604

or

Join via Microsoft Teams Live Event Meeting:

https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F_%23%2Fl%2Fmeetup-join%2F19%3Ameeting_Y2FjZjk-wNmItNzJhOS00YTBmLTg1MDYtMDM3MWQ1MjBmNz-dm%40thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%25228ab1207e-27c0-403f-92a7-fff564f962dd%2522%252c%2522Oid%2522%253a%2522e8914302-f6bd-478c-839a-16628438cb7f%2522%257d%26CT%3D1663012354483%26OR%3DOutlook-Body%26CID%3D87AE1A88-084D-4668-85D3-2FDB79B034E5%26anon%3Dtrue&type=meetup-join&deeplinkId=c2f3df99-4789-4ee4-8f2f-8362ef682f58&directDl=true&msLaunch=true&enableMobilePage=true&suppressPrompt=true

or

Join via Toll-Free Conference Call:

Toll-Free Conference Bridge (877) 226-9790, Passcode: 7098100

OPUC represents residential and small commercial consumers, as a class, in the electric, water, wastewater, and telecommunications utility industries in Texas. OPUC primarily represents these consumers before the Public Utility Commission of Texas, State Office of Administrative Hearings, state courts and Electric Reliability Council of Texas.

The hearing is open to the public. All interested persons are invited to attend and provide input on OPUC's priorities, functions, and effectiveness.

For additional information, please contact Matthew Cooksey, Government Relations Specialist, at P.O. Box 12397, Austin, Texas 78711-2397 or (512) 936-7500 or 1 (877) 839-0363 or email: opuc_customer@opuc.texas.gov.

TRD-202203684
Chris Ekoh
Interim Chief Executive & Public Counsel
Office of Public Utility Counsel
Filed: September 13, 2022

♦ ♦ ♦

Supreme Court of Texas

Preliminary Approval of a Will Form for a Person Who is Single, Widowed, or Divorced and Who Has Children; Will Form for a Married Person Who Has Children; Will Form for a Person Who is Single, Widowed, or Divorced and Does Not Have Children; and Will Form for a Married Person Who Does Not Have Children

(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 order is not included in the print version of the Texas Register. The figure is available in the on-line version of the September 23, 2022, issue of the Texas Register.)

TRD-202203615
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: September 8, 2022

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Texas Department of Transportation

Public Hearing Notice Statewide Transportation Improvement Program for FY 2023-2026

The Texas Department of Transportation (TxDOT) will conduct a virtual public hearing on Thursday, October 13, 2022, at 10:00 a.m. Central Standard Time (CST) to receive public comments on the Statewide Transportation Improvement Program (STIP) for FY 2023-2026. Instructions for accessing the hearing will be published at *https://www.txdot.gov/projects/hearings-meetings.html.*

The STIP reflects the federally funded transportation projects in the FY 2023-2026 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Dallas-Fort Worth, El Paso, Houston and San Antonio. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 134 requires an MPO to develop its TIP in cooperation with the state and affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section 135 requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

A copy of the proposed FY 2023-2026 STIP will be available for review, at the time the notice of hearing is published, on TxDOT's website at: *https://www.txdot.gov/projects/planning/stip.html*

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 810-6663 no later than 12:00 p.m. CST on Wednesday, October 12, 2022. Speakers will be taken in the order registered and will be limited to three minutes. Speakers who do not register in advance will be taken at the end of the hearing. Any interested person may offer comments to be included in the official summary report. Groups, organizations, or associations should be represented by only one speaker.

Speakers are requested to refrain from repeating previously presented testimony.

TxDOT makes every reasonable effort to accommodate the needs of the public. The virtual public hearing will be conducted in English. If you have a special communication accommodation or need for an interpreter, a request can be made. If you have a disability and need assistance, special arrangements can also be made to accommodate most needs. Please call TxDOT's Transportation Planning and Programming Division at (512) 810-6663 no later than 4:00 p.m. on Friday, October 7, 2022, to request special accommodations. Please be aware that advance notice is requested as some accommodations may require time for TxDOT to arrange.

Interested parties who are unable to participate in the hearing may submit comments regarding the proposed FY 2023-2026 STIP to Jessica Butler, P.E., Director of the Transportation Planning and Programming Division, P.O. Box 149217, Austin, Texas 78714-9217. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by 4:00 p.m. CST on Monday, October 24, 2022.

TRD-202203696
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: September 14, 2022

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How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 47 (2022) is cited as follows: 47 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "47 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 47 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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