TEXAS REGISTER

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School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register.* These blank pages are caused by the production process used to print the *Texas Register*.

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ADOPTED RULES

THE ATTORNEY GENERAL

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

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. 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: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Requests for Opinions

RQ-0127-KP

Requestor:

The Honorable Daphne Session

Houston County Attorney

401 East Houston Avenue

Crockett, Texas 75835

Re: Whether time spent as a county employee may be considered in determining county longevity pay when the employee becomes an elected county officer (RQ-0127-KP).

Briefs requested by October 6, 2016.

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

TRD-201604792
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: September 14, 2016

♦ ♦ ♦

Opinions

Opinion No. KP-0113

Mr. Mike Morath

Commissioner of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Procedures for requesting video surveillance of special education settings pursuant to Education Code section 29.022 (RQ-0103-KP)

S U M M A R Y

The language chosen by the Legislature in subsection 29.022(a) of the Education Code requires that upon receiving a request, a school district shall provide equipment not to a single classroom but "to each school in the district" that provides students special education services and otherwise meets the requirements of the statute. Each school receiving equipment must place, operate, and maintain a camera in "each self-contained classroom or other special education setting" providing special education services.

A rule defining "staff member" to include only a teacher, related service provider, paraprofessional, or educational aide assigned to work in a self-contained classroom or other special education setting or the principal or assistant principal of the campus at which a self-contained classroom or other special education setting is located imposes additional restrictions in excess of the plain language chosen by the Legislature. A court addressing such a definition would likely conclude that the Texas Education Agency has exceeded its rulemaking authority by adopting a rule contrary to the statutory provisions.

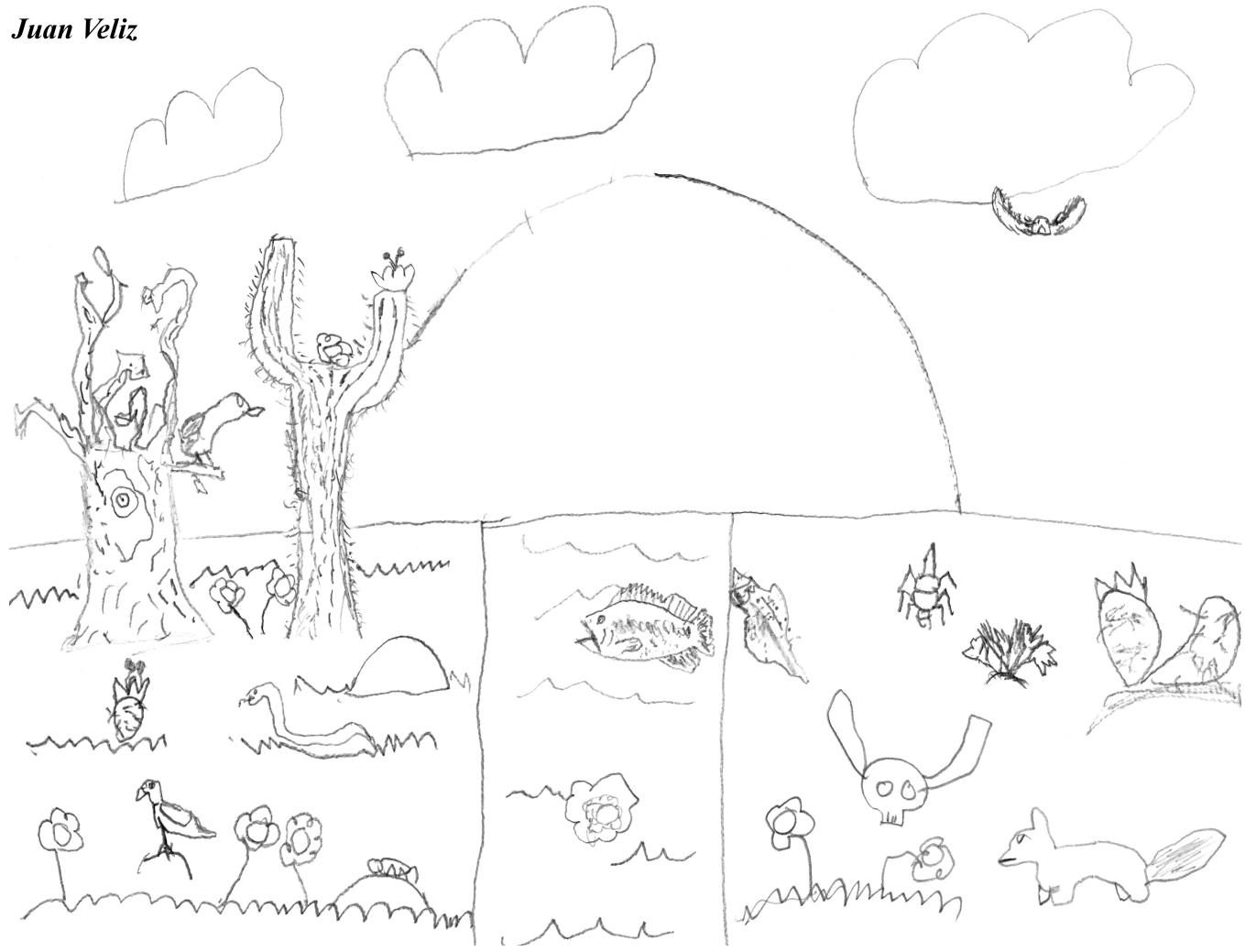
Subsection 29.022(b) allows a school to discontinue operation and maintenance of a camera if a setting in which the camera has been placed is no longer a "self-contained classroom or other special education setting in which a majority of the students in regular attendance are: (1) provided special education and related services; and (2) assigned to a self-contained classroom or other special education setting for at least 50 percent of the instructional day."

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

TRD-201604806
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: September 14, 2016

♦ ♦ ♦

Juan Veliz



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 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER A. GENERAL INFORMATION AND DEFINITIONS

10 TAC §§10.1 - 10.4

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules; Subchapter A, concerning General Information and Definitions, §§10.1 - 10.4. The purpose of the repeal is to allow for the replacement of the existing sections with a new Subchapter A that encompasses requirements for all applications applying for multifamily funding through the Department. Proposed new §§10.1 - 10.4 is published concurrently with this repeal.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will involve the replacement of existing Subchapter A with a new Subchapter A that encompasses requirements for all applications applying for multifamily funding through the Department. There is no change in economic cost to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 23, 2016 to October 14, 2016, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Sharon Gamble, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to sharon.gamble@tdhca.state.tx.us, or by fax to (512) 475-0764, attn: Sharon Gamble. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. AUSTIN LOCAL TIME OCTOBER 14, 2016.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Tex. Gov't Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed repeal affects Tex. Gov't Code Chapter 2306, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The repeal affects no other statutes, articles or codes.

§10.1. Purpose.
§10.2. General.
§10.3. Definitions.
§10.4. Program Dates.

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, 2016.

TRD-201604743
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 475-3344

♦ ♦ ♦

10 TAC §§10.1 - 10.4

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter A §§10.1 - 10.4, concerning General Information and Definitions. The purpose of the proposed new sections is to explain the purpose of the uniform multifamily rules, define terms that are used throughout the various subchapters and applicable to multifamily funding from the Department, and provide guidance on critical program dates associated with the multifamily funding the Department administers. The proposed repeal of existing Subchapter A is published concurrently with this rulemaking.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be to explain the purpose of the uniform multifamily rules, define terms and provide guidance on program dates.

The 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.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new or additional economic effect on small or micro-businesses. The 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.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 23, 2016 to October 14, 2016, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Sharon Gamble, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to sharon.gamble@tdhca.state.tx.us, or by fax to (512) 475-0764, attn: Sharon Gamble. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. AUSTIN LOCAL TIME OCTOBER 14, 2016.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Tex. Gov't Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new sections affect Chapter 2306 of the Tex. Gov't Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The new sections affect no other statutes, articles or codes.

§10.1. Purpose.

This chapter applies to an award of multifamily development funding or other assistance including the award of Housing Tax Credits by the Texas Department of Housing and Community Affairs (the "Department") and establishes the general requirements associated in making such awards. Applicants pursuing such assistance from the Department 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 Subchapter C of this title (relating to Previous Participation), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules) and other Department rules. This chapter does not apply to any project-based rental assistance or 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.

§10.2. General.

(a) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, rent and income limits, 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 multifamily rules 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 multifamily rules to each specific situation as it is presented in the submitted 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 independently perform the necessary due diligence to research, confirm, and verify any data, opinions, interpretations or other information upon which Applicant bases an Application.

(b) 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.

(c) Census Data. Where this chapter requires the use of census or American Community Survey data, the Department shall use the most current data available as of October 1, 2016, unless specifically otherwise provided in federal or state law or in the rules. The availability of more current data shall generally be disregarded. For Rural Area and Urban Area designations, the Department shall use in establishing the designations, the U.S. Census Bureau's Topographically Integrated Geographic Encoding and Referencing ("TIGER") shape files applicable for the population dataset used in making such designations.

(d) 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, and as a waiver of any of the applicable provisions of Tex. Gov't Code, Chapter 552, with the exception of any such provisions that are considered by law as not subject to a waiver.

(e) Responsibilities of Municipalities and Counties. In providing 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 such resolution will be 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 Affirmatively Further Fair Housing analysis, 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.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted 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 deadlines are based on calendar days.

§10.3. Definitions.

(a) Terms defined in this chapter apply to the Housing Tax Credit Program, Multifamily Housing Revenue Bond Program, Direct Loan Program and any other programs for the development of affordable rental property administered by the Department and as may be defined in this title. 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 Department rules, as applicable.

(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 (e.g., school, warehouse, office, hospital, hotel, etc.), into a building which will be used, in whole or in part, for residential purposes. Adaptive reuse requires that the exterior walls of the existing building remain in place. All units must be contained within the original exterior walls of the existing building. Porches and patios may protrude beyond the exterior walls. Ancillary non-residential buildings, such as a clubhouse, leasing office and/or amenity center may be newly constructed outside the walls of the existing building or as detached buildings on the Development Site.

(2) Administrative Deficiencies--Information requested by Department staff that is required to clarify or correct one or more inconsistencies or to provide non-material missing information in the original Application or to assist staff in evaluating the 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. Administrative Deficiencies may be issued at any time while the Application or Contract is under consideration by the Department, including at any time while reviewing performance under a Contract, processing documentation for a Commitment of Funds, closing of a loan, processing of a disbursement request, close-out of a Contract, or resolution of any issues related to compliance.

(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 may be terminated upon foreclosure or deed in lieu of foreclosure. The Department reserves the right to extend the Affordability Period for Direct Loan 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 the Code §42(b).

(A) for purposes of the Application, the Applicable Percentage will be projected at:

(i) nine percent for 70 percent present value credits, pursuant to the Code, §42(b); or

(ii) fifteen basis points over the current applicable percentage for 30 percent present value credits, unless fixed by Congress, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department.

(B) for purposes of making a credit recommendation at any other time, the Applicable Percentage will be based on:

(i) the percentage indicated in the Agreement and Election Statement, if executed; or

(ii) the percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.

(6) Applicant--Means any individual or a group of individuals and any Affiliates who file an Application for funding or tax credits subject to the requirements of this chapter or 10 TAC Chapters 11, 12, or 13 and who 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. In administering the application process the Department staff will assume that the applicant will be able to form any such entities 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 such rights, powers, and privileges must be accomplished as required in this Chapter and 10 TAC Chapters 11, 12 and 13, as applicable.

(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 and Loan Term Sheet--A document that may be issued to an awardee of a Direct Loan before the issuance of a Commitment and/or Contract which preliminarily sets forth the terms and conditions under which the Direct Loan will be made available. An Award Letter and Loan Term Sheet will typically be contingent on the awardee satisfying certain requirements prior to executing a Commitment and/or 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 8 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 2 feet deep and 3 feet wide and high enough to accommodate 5 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.

(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 §10.402(f) of this chapter (relating to Housing Tax Credit and Tax Exempt Bond Developments).

(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--The notice given by the Texas Bond Review Board ("TBRB") to an issuer reserving a specific amount of the state ceiling for a specific issue of bonds.

(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 (also referred to as Contract)--A legally binding written contract, setting forth the terms and conditions under which housing tax credits, loans, grants or other sources of funds or financial assistance from the Department will be made available.

(20) Commitment of Funds--Occurs after the Development is approved by the Board and once a Commitment or Award Letter and Loan Term Sheet is executed between the Department and Development Owner. For Direct Loan Programs, this process is distinct from "Committing to a specific local project" as defined in 24 CFR Part 92, which may occur when the activity is set up in the disbursement and information system established by HUD; known as the Integrated Disbursement and Information System (IDIS). 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) 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.

(23) Competitive Housing Tax Credits ("HTC")--Tax credits available from the State Housing Credit Ceiling.

(24) Compliance Period--With respect to a building financed by Housing Tax Credits, the period of fifteen (15) taxable years, beginning with the first taxable year of the credit period pursuant to §42(i)(1) of the Code.

(25) Continuously Occupied--The same household has resided in the Unit for at least twelve (12) months.

(26) Contract--See *Commitment.*

(27) Contract Rent--Net rent based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.

(28) Contractor--See *General Contractor.*

(29) Control (including the terms "Controlling," "Controlled by," and/or "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. Controlling entities of a partnership include the general partners, special limited partners when applicable, but not investor limited partners who do not possess other factors or attributes that give them Control. Controlling entities of a limited liability company include but are not limited to the managers, managing members, any members with 10 percent or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership, but not investor members who do not possess other factors or attributes that give them Control. Controlling individuals or entities of a corporation, including non-profit corporations, include voting members of the corporation's board, whether or not any one member did not participate in a particular decision due to recusal or absence. Multiple Persons may be deemed to have Control simultaneously.

(30) Credit Underwriting Analysis Report--Sometimes referred to as the "Report." A decision making tool used by the Department and Board containing a synopsis and reconciliation of the Application information submitted by the Applicant.

(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.

(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.

(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 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 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 and receiving less than 10 percent of the total Developer Fee. The Developer may or may not be a Related Party or Principal of the Owner.

(36) Developer Fee--Compensation in amounts defined in §10.302(e)(7) of this chapter (relating to Underwriting Rules and Guidelines) 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.

(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; 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 project consisting of multiple buildings that are located on scattered sites and contain only rent restricted units. (§2306.6702)

(39) Development Consultant or Consultant--Any Person (with or without ownership interest in the Development) 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 and/or Commitment with the Department. (§2306.6702)

(41) Development Site--The area, or if scattered site, areas on which the Development is proposed and to be encumbered by a LURA.

(42) Development Team--All Persons and Affiliates thereof that play a role in the development, construction, rehabilitation, management and/or continuing operation of the subject Development, including any Development Consultant and Guarantor.

(43) Direct Loan--Funds provided through the HOME Program, Neighborhood Stabilization Program, National Housing Trust Fund, Tax Credit Assistance Program Repayment ("TCAP Repayment") or State Housing Trust Fund or other program available through the Department for multifamily development. The terms and conditions for Direct Loans will be determined by the NOFA under which they are awarded, the Contract or the loan documents. The tax-exempt bond program is specifically excluded.

(44) Economically Distressed Area--An area that is in a census tract that has a median household income that is 75 percent 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 within the five (5) years ending at the beginning of the Application Acceptance Period. 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")--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 designed principally for use by a single person.

(47) Elderly Development--A Development that is subject to an Elderly Limitation or a Development that is subject to an Elderly Preference.

(A) Elderly Limitation Development--A Development subject to an "elderly limitation" is a Development that meets the requirements of the Housing for Older Persons Act ("HOPA") under the Fair Housing Act and receives no funding that requires leasing to persons other than the elderly (unless the funding is from a federal program for which the Secretary of HUD has confirmed that it may operate as a Development that meets the requirements of HOPA); or

(B) Elderly Preference Development--A property receiving HUD funding and certain other types of federal assistance is a Development subject to an "elderly preference." A Development subject to an Elderly Preference must lease to other populations, including in many cases elderly households with children. A property that is deemed to be a Development subject to an Elderly Preference must be developed and operated in a manner which will enable it to serve reasonable foreseeable demand for households with children, including, but not limited to, making provision for such in developing its unit mix and amenities.

(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 §10.305 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 created under Tex. Gov't Code §2306.1112.

(51) Existing Residential Development--Any Development Site which contains existing residential units at any time after 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 Land Use Restriction Agreement or

(B) the date which is fifteen (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) General Contractor (including "Contractor")--One who contracts for 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) and (B) of this paragraph:

(A) any subcontractor, material supplier, or equipment lessor receiving more than 50 percent of the contract sum in the construction contract will be deemed a prime subcontractor; or

(B) if more than 75 percent of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed prime subcontractors.

(55) General Partner--Any person or entity identified as a general partner in a certificate of formation for the partnership 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.

(56) 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.

(57) Governmental Entity--Includes federal, state or local agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts, tribal governments and other similar entities.

(58) Gross Capture Rate--Calculated as the Relevant Supply divided by the Gross Demand.

(59) Gross Demand--The sum of Potential Demand from the Primary Market Area ("PMA"), demand from other sources, and Potential Demand from a Secondary Market Area ("SMA") to the extent that SMA demand does not exceed 25 percent of Gross Demand.

(60) 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.

(61) 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.

(62) HTC Development (also referred to as "HTC Property")--A Development subject to an active LURA for Housing Tax Credits allocated by the Department.

(63) HTC Property--See *HTC Development.*

(64) Hard Costs--The sum total of Building Costs, Site Work costs, Off-Site Construction costs and contingency.

(65) Historically Underutilized Businesses ("HUB")--An entity that is certified as such under Tex. Gov't Code, Chapter 2161 by the State of Texas.

(66) 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.

(67) Housing Credit Allocation--An allocation of Housing Tax Credits by the Department to a Development Owner for a specific Application in accordance with the provisions of this chapter and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan).

(68) Housing Credit Allocation Amount--With respect to a Development or a building within a Development, the amount of Housing Tax Credits the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the Affordability Period and which the Board allocates to the Development.

(69) Housing Quality Standards ("HQS")--The property condition standards described in 24 CFR §982.401.

(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 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--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 paragraph (55) of 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 §10.303 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 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 an Application or other documentation that exceeds the scope of an Administrative Deficiency. May include a group of Administrative Deficiencies that, taken together, create the need for a substantial re-assessment or reevaluation of the Application.

(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.

(81) Net Operating Income ("NOI")--The income remaining after all operating expenses, including replacement reserves and taxes that have been paid.

(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 typically 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. 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) 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.

(87) Office of Rural Affairs--An office established within the Texas Department of Agriculture; formerly the Texas Department of Rural Affairs.

(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 twelve (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) 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 *Property Condition Assessment*.

(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 Carryover Activities Manual--The manual produced and amended from time to time by the Department which explains the requirements and provides guidance for the filing of post-carryover activities, or for Tax Exempt Bond Developments, the requirements and guidance for post Determination Notice activities.

(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) Primary Market--Sometimes referred to as "Primary Market Area." The area defined by the Market Analyst as described in §10.303 of this chapter from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(97) Primary Market Area ("PMA")--See *Primary Market*.

(98) Principal--Persons that will exercise Control (which includes voting board members pursuant to §10.3(a)(29) of this chapter) over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) partnerships, Principals include all General Partners, special limited partners, and Principals with ownership interest;

(B) corporations, Principals include 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 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder; and

(C) limited liability companies, Principals include all managers, managing members, members having a 10 percent 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.

(99) 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.

(100) 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 thereon in connection with the Application.

(101) Property Condition Assessment ("PCA")--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." The PCA 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 PCA must be prepared in accordance with §10.306 of this chapter (relating to Property Condition Assessment Guidelines) as it relates to a specific Development.

(102) 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.

(103) Qualified Contract Price ("QC Price")--Calculated purchase price of the Development as defined within §42(h)(6)(F) of the Code and as further delineated in §10.408 of this chapter (relating to Qualified Contract Requirements).

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

(105) Qualified Entity--Any entity permitted under §42(i)(7)(A) of the Code and any entity controlled by such qualified entity.

(106) Qualified Nonprofit Development--A Development which meets the requirements of §42(h)(5) of the Code, includes the re-

quired involvement of a Qualified Nonprofit Organization, and is seeking Competitive Housing Tax Credits.

(107) Qualified Nonprofit Organization--An organization that meets the requirements of §42(h)(5)(C) of the Code for all purposes, and for an allocation in the nonprofit set-aside or subsequent transfer of the property, meets the requirements of Tex. Gov't Code §2306.6706, and §2306.6729, and §42(h)(5) of the Code.

(108) Qualified Purchaser--Proposed purchaser of the Development who meets all eligibility and qualification standards stated in this chapter of the year the Request is received, including attending, or assigning another individual to attend, the Department's Property Compliance Training.

(109) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the construction of an equal number of units or less on the Development Site. At least one Unit must be reconstructed in order to qualify as Reconstruction.

(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 a Development on the Development Site, but does not include Adaptive Reuse. (§2306.004(26-a)) More specifically, Rehabilitation is the repair, refurbishment and/or replacement of existing mechanical and 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) Related Party--As defined in Tex. Gov't Code, §2306.6702.

(112) Relevant Supply--The supply of Comparable Units in proposed and Unstabilized Developments targeting the same population including:

(A) the proposed subject Units;

(B) Comparable Units in another proposed development within the PMA with a priority Application over the subject, based on the Department's evaluation process described in §10.201(6) of this chapter (relating to Procedural Requirements for Application Submission) that may not yet have been presented to the Board for consideration of approval;

(C) Comparable Units in previously approved but Unstabilized Developments in the PMA; and

(D) Comparable Units in previously approved but Unstabilized Developments in the Secondary Market Area (SMA), in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.

(113) Report--See *Credit Underwriting Analysis Report.*

(114) Request--See *Qualified Contract Request.*

(115) Reserve Account--An individual account:

(A) created to fund any necessary repairs for a multifamily rental housing Development; and

(B) maintained by a First Lien Lender or Bank Trustee.

(116) Right of First Refusal ("ROFR")--An Agreement to provide a right to purchase the Property to a Qualified Entity with priority to that of any other buyer at a price established in accordance with an applicable LURA.

(117) Rural Area--

(A) a Place that is located:

(i) outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;

(ii) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an Urban Area; or

(iii) within the boundaries of a local political subdivision that is outside the boundaries of an Urban Area.

(B) for areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §10.204(5)(A) of this chapter (relating to Required Documentation for Application Submission) or as requested in accordance with §10.204(5)(B).

(118) Secondary Market--Sometimes referred to as "Secondary Market Area." The area defined by the Qualified Market Analyst as described in §10.303 of this chapter.

(119) Secondary Market Area ("SMA")--See *Secondary Market.*

(120) Single Room Occupancy ("SRO")--An Efficiency Unit that meets all the requirements of a Unit except that it may, but is not required, to be rented on a month to month basis to facilitate Transitional Housing. Buildings with SRO Units have extensive living areas in common and are required to be Supportive Housing and include the provision for substantial supports from the Development Owner or its agent on site.

(121) Site Control--Ownership or a current contract or series of contracts, that meets the requirements of §10.204(10) of this chapter, that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the owner, to develop a Property and subject it to a LURA reflecting the requirements of any awards of assistance it may receive from the Department.

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

(123) State Housing Credit Ceiling--The aggregate amount of 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 §42(h)(3)(C) of the Code, and Treasury Regulation §1.42-14.

(124) Sub-Market--An area defined by the Underwriter based on general overall market segmentation promulgated by market data tracking and reporting services from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(125) Supportive Housing--Residential rental developments intended for occupancy by individuals or households in need of specialized and specific non-medical services in order to maintain independent living. Supportive housing developments generally include established funding sources outside of project cash flow that require certain populations be served and/or certain services provided. The developments are expected to be debt free or have no permanent foreclosable or noncash flow debt. A Supportive Housing Development financed with tax-exempt bonds with a project based rental assistance

contract for a majority of the Units may be treated as Supportive Housing under all subchapters of this chapter, except Subchapter D of this chapter (relating to Underwriting and Loan Policy). If the bonds are expected to be redeemed upon construction completion, placement in service or stabilization and no other permanent debt will remain, the Supportive Housing Development may be treated as Supportive Housing under Subchapter D of this chapter. The services offered generally include case management and address special attributes of such populations as Transitional Housing for homeless and at risk of homelessness, persons who have experienced domestic violence or single parents or guardians with minor children.

(126) 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 Subchapter F of this chapter (relating to Compliance Monitoring), and published on the Department's web site (www.tdhca.state.tx.us).

(127) Target Population--The designation of types of housing populations shall include Elderly Developments, and those that are entirely Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations. An existing Development that has been designated as a Development serving the general population may not change to become an Elderly Development, or vice versa, without Board approval.

(128) Tax-Exempt Bond Development--A Development requesting or having been awarded 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 §42(h)(4) of the Code, such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.

(129) Tax-Exempt Bond Process Manual--The manual produced and amended from time to time by the Department which explains the process and provides guidance for the filing of a Housing Tax Credit Application utilizing Tax-Exempt Bonds.

(130) Third Party--A Person who is not:

(A) an Applicant, General Partner, Developer, or General Contractor; or

(B) an Affiliate to the Applicant, General Partner, Developer, or General Contractor; or

(C) anyone receiving any portion of the administration, contractor, or Developer fees from the Development; or

(D) any individual that is an executive officer or member of the governing board or has greater than 10 percent ownership interest in any of the entities are identified in subparagraphs (A) - (C) of this paragraph.

(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 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 twenty-four (24) months; and

(B) is owned by a Development Owner that includes a governmental entity or a qualified non-profit 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) U.S. Department of Agriculture ("USDA")--Texas Rural Development Office ("TRDO") serving the State of Texas.

(134) 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.

(135) Underwriter--The author(s) of the Credit Underwriting Analysis Report.

(136) Uniform Multifamily Application Templates--The collection of sample resolutions and form letters, produced by the Department, as may be required under this chapter, Chapter 11 and Chapter 12 of this title that may be used, (but are not required to be used), to satisfy the requirements of the applicable rule.

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

(138) 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.

(139) Unit Type--Units will be considered different Unit Types if there is any variation in the number of bedroom, full bathrooms or a square footage difference equal to or more than 120 square feet. For example: A two Bedroom/one full bath Unit is considered a different Unit Type than a two Bedroom/two full bath Unit. A three Bedroom/two full bath Unit with 1,000 square feet is considered a different Unit Type than a three Bedroom/two full bath Unit with 1,200 square feet. A one Bedroom/one full bath Unit with 700 square feet will be considered an equivalent Unit Type to a one Bedroom/one full bath Unit with 800 square feet. A powder room is the equivalent of a half-bathroom but does not by itself constitute a change in Unit Type.

(140) 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 percent occupancy level for at least twelve (12) consecutive months 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.

(141) Urban Area--A Place that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than a Place described by paragraph (117)(A) of this subsection. For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §10.204(5) of this chapter.

(142) Utility Allowance--The estimate of tenant-paid utilities made in accordance with Treasury Regulation, §1.42-10 and §10.614 of this chapter (relating to Utility Allowances).

(143) Work Out Development--A financially distressed Development for which the Owner and/or a primary financing participant is seeking a change in the terms of Department funding or program restrictions.

(b) Request for Staff Determinations. Where the definitions of Development, Development Site, New Construction, Rehabilitation, Reconstruction, Adaptive Reuse, and Target Population fail to account fully for 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 these specific terms and their usage within the applicable rules. 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's determination may take into account the purpose of or policies addressed by a particular rule or requirement, materiality of elements, substantive elements of the development plan that relate to the term or definition, the common usage of the particular term, or other issues relevant to the rule or requirement. All such 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. Such a determination is intended to provide clarity with regard to Applications proposing activities such as: scattered site development or combinations of construction activities (e.g., Rehabilitation with some New Construction). An Applicant may appeal a determination for their Application if the determination provides for a treatment that relies on factors other than the explicit definition. A Board determination or a staff determination not timely appealed cannot be further appealed or challenged.

§10.4. Program Dates.

This section reflects key dates for all multifamily development programs except for the Competitive Housing Tax Credit Program. A program calendar for the Competitive Housing Tax Credit Program is provided in Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan). Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Non-statutory deadlines specifically listed in this section may be extended by the Department for a period of not more than five (5) business days provided; however, that the Applicant requests 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. Except as provided for under 10 TAC §1.1 relating to Reasonable Accommodation Requests, extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party or the documentation involves signatures needed on certifications in the Application.

(1) Full Application Delivery Date. The deadline by which the Application must be submitted to the Department. For Direct Loan Applications, such deadline will generally be defined in the applicable NOFA and for Tax-Exempt Bond Developments, such deadlines are more fully explained in §10.201(2) of this chapter (relating to Procedural Requirements for Application Submission).

(2) Notice to Submit Lottery Application Delivery Date. No later than December 9, 2016, Applicants that receive an advance notice regarding a Certificate of Reservation must submit a notice to the Department, in the form prescribed by the Department.

(3) Applications Associated with Lottery Delivery Date. No later than December 16, 2016, Applicants that participated in the Texas Bond Review Board Lottery must submit the complete tax credit Application to the Department.

(4) Administrative Deficiency Response Deadline. Such deadline shall be five (5) business days after the date on the deficiency notice without incurring a penalty fee pursuant to §10.901 of this chapter (relating to Fee Schedule).

(5) Third Party Report Delivery Date (Environmental Site Assessment (ESA), Property Condition Assessment (PCA), Appraisal (if applicable), Market Analysis and the Site Design and Development Feasibility Report). For Direct Loan Applications, the Third Party reports meeting specific requirements described in §10.205 must be submitted with the Application in order for it to be considered a complete Application, 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 submitted no later than seventy-five (75) calendar days prior to the Board meeting at which the tax credits will be considered. The seventy-five (75) calendar day deadlines are available on the Department's website.

(6) Resolutions Delivery Date. Resolutions required for Tax-Exempt Bond Developments or Direct Loan Applications not layered with Housing Tax Credits must be submitted no later than fourteen (14) calendar days before the Board meeting at which consideration of the award will occur. 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.

(7) Challenges to Neighborhood Organization Opposition Delivery Date. No later than forty-five (45) calendar days prior to the Board meeting at which consideration of the award will occur.

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, 2016.

TRD-201604747
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 475-3344

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SUBCHAPTER B. SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS

10 TAC §10.101

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules; Subchapter B, concerning Site and Development Requirements and Restrictions, §10.101. The purpose of the repeal is to allow for the replacement of the section with a new section that encompasses restrictions and requirements for all development sites for which applications are submitted in applying for multifamily funding through the Department. Proposed new §10.101 is published concurrently with this proposed repeal.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any

foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be the replacement of the existing section with a new section that encompasses requirements for all applications applying for multifamily funding through the Department. There is no change in economic cost to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 23, 2016 to October 14, 2016, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Sharon Gamble, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to sharon.gamble@tdhca.state.tx.us, or by fax to (512) 475-0764, attn: Sharon Gamble. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. AUSTIN LOCAL TIME OCTOBER 14, 2016.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Tex. Gov't Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed repeal affects Tex. Gov't Code Chapter 2306, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The repeal affects no other statutes, articles or codes.

§10.101. 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, 2016.

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 475-3344

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10 TAC §10.101

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Subchapter B §10.101, concerning Site and Development Requirements and Restrictions. The purpose of the new section is to provide guidance relating to site and development requirements and restrictions for all development sites for which applications are submitted in applying for multifamily funding through the Department. The proposed repeal of existing §10.101 is published concurrently with this rulemaking.

FISCAL NOTE. Timothy K. Irvine, Executive Director, 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 new costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also 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 to provide guidance relating to site and development requirements and restrictions relating to applications applying for multifamily funding through the Department. The 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.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new or additional economic effect on small or micro-businesses. The 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.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 23, 2016 to October 14, 2016, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Sharon Gamble, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to sharon.gamble@tdhca.state.tx.us, or by fax to (512) 475-0764, attn: Sharon Gamble. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. AUSTIN LOCAL TIME OCTOBER 14, 2016.

STATUTORY AUTHORITY. The new section is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new section is proposed pursuant to Tex. Gov't Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new section affects Chapter 2306 of the Tex. Gov't Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The new section affects no other statutes, articles or codes.

§10.101. 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 one-hundred (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 local requirements they must also be met. 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 one-hundred (100) year floodplain. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from the U.S. Department of Housing and Urban Development (HUD) or U.S. Department of Agriculture (USDA) are exempt from this requirement. However, where existing and ongoing federal assistance is not applicable such Rehabilitation (excluding Reconstruction) Developments will be allowed in the one-hundred (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. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph maybe considered ineligible as determined by the Board. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs ("VA") may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application and must include a letter stating the Rehabilitation of the existing units is consistent with achieving at least one or more of the stated goals as outlined in the State of Texas Analysis of Impediments to Fair Housing Choice or, if within the boundaries of a participating jurisdiction or entitlement community, as outlined in the local analysis of impediments to fair housing choice and identified in the participating jurisdiction's Action Plan. 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. The minimum distances noted assume that the land between the proposed Development Site and the particular undesirable feature has no significant intervening barriers or obstacles such as waterways or bodies of water, major high speed roads, park land, or walls, such as noise suppression walls adjacent to railways or highways. Where there is a local ordinance that regulates the proximity of such undesirable feature to a multifamily development that differs from the minimum distances noted below, documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. The distances identified in subparagraphs (A) - (J) of this paragraph are intended primarily to address sensory concerns such as noise or smell, social factors making it inappropriate to locate residential housing in proximity to certain businesses. 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 request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(A) Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Transportation Code, §396.001;

(B) Development Sites located within 300 feet of a solid waste or sanitary landfills;

(C) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code, §243.002, or as zoned, licensed and regulated as such by the local municipality;

(D) Development Sites in which the buildings are located within 100 feet of the easement of any overhead high voltage transmission line, support structures for high voltage transmission lines, or other similar structures. This does not apply to local service electric lines and poles;

(E) Development Sites located within 500 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;

(F) Development Sites located within 500 feet of heavy industrial (i.e. facilities that require extensive capital investment in land and machinery, are not easily relocated and produce high levels of external noise such as manufacturing plants, fuel storage facilities (excluding gas stations) etc.);

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

(H) Development Sites in which the buildings are located within one-quarter mile of the accident zones or clear zones of any airport;

(I) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids. Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance ("PIPA");

(J) Development Sites located within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily; 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 and which cannot be adequately mitigated.

(3) Undesirable Neighborhood Characteristics.

(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. An Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department. 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 and staff may perform an assessment of the Development Site to determine Site eligibility. The Applicant understands that any determination made by staff or the Board at the time of bond inducement regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the undesirable neighborhood characteristics become available while the full 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 and presented to the Board. 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 may be subject to termination. Termination due to non-disclosure may be appealed pursuant to §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)). 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. The assessment of the Development Site and neighborhood will be presented to the Board with a recommendation with respect to the eligibility of the Development Site. Factors to be considered by the Board, despite the existence of the undesirable neighborhood characteristics are identified in subparagraph (E) of this paragraph. Should the Board make a determination that a Development Site is ineligible, the termination of the Application resulting from such Board action is not subject to appeal.

(B) The undesirable neighborhood characteristics include those noted in clauses (i) - (iv) of this subparagraph and additional information as provided in subparagraphs (C) and (D) of this paragraph must be submitted in the Application. If an Application for a Development Site involves three or more undesirable neighborhood characteristics, in order to be found eligible it will be expected that, in addition to demonstrating satisfactory mitigation for each characteristic disclosed, the Development Site must be located within an area in which there is a concerted plan of revitalization already in place or that private sector economic forces, such as those referred to as gentrification are already underway and indicate a strong likelihood of a reasonably rapid transformation of the area to a more economically vibrant area. In order to be considered as an eligible Site despite the presence of such undesirable neighborhood characteristic, an Applicant must demonstrate actions being taken that would lead a reader to conclude that there is a high probability the undesirable characteristic will be sufficiently mitigated within a reasonable time, typically prior to placement in service, and that the undesirable characteristic will either no longer be present or will have been sufficiently mitigated such that it would not have required disclosure.

(i) The Development Site is located within a census tract that has a poverty rate above 30 percent for individuals.

(ii) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(iii) The Development Site is located within 1,000 feet (measured from nearest boundary of the Site to the nearest boundary of blighted structure) of multiple vacant structures that have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.

(iv) The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency. Any school in the attendance zone that has not achieved Met Standard for three consecutive years and has failed by at least one point in the most recent year, unless there is a clear trend indicating imminent compliance, shall be unable to mitigate due to the potential for school closure as an administrative remedy pursuant to Chapter 39 of the Texas Education Code. 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. The applicable school rating will be the 2016 accountability rating assigned by the Texas Education Agency. 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. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating. Development Sites subject to an Elderly Limitation is considered exempt and does not have to disclose the presence of this characteristic.

(C) Should any of the undesirable neighborhood characteristics described in subparagraph (B) of this paragraph exist, the Applicant must submit the Undesirable Neighborhood Characteristics Report that contains the information described in clauses (i) - (viii) of this subparagraph and subparagraph (D) of this paragraph so that staff may conduct a further Development Site and neighborhood review.

(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 (3) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (3) 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) An assessment of school performance for each of the schools in the attendance zone containing the Development that did not achieve the Met Standard rating, for the previous two academic years (regardless of whether the school Met Standard in those years), that includes the TEA Accountability Rating Report, 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 in effect; and

(viii) Any additional information necessary to complete an assessment of the Development Site, as requested by staff.

(D) Information regarding mitigation of undesirable neighborhood characteristics should be relevant to the undesirable characteristics that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application and may include, but is not limited to, the measures described in

clauses (i) - (iv) of this subparagraph. In addition to those measures described herein, documentation from the local municipality may also be submitted stating the Development is consistent with their obligation to affirmatively further fair housing. The mitigation must be accompanied by a report summarizing the data and to support the conclusion of a reasonable expectation by staff and the Board that the issues will be resolved or significantly improved by the time the Development is placed into service. Conclusions for such reasonable expectation must be affirmed by an industry professional, as appropriate.

(i) Evidence that the poverty rate within the census tract has decreased over the five-year period preceding the date of Application, or that the census tract is contiguous to a census tract with a poverty rate below 20% and there are no physical barriers between them such as highways or rivers which would be reasonably considered as separating or dividing the neighborhood containing the proposed Development from the low poverty area must be submitted. Other mitigation may include, but is not limited to, evidence of the availability of adult education and job training that will lead to full-time permanent employment for tenants, a description of additional tenant services to be provided at the development that address root causes of poverty, and a clear and compelling reason that the Development should be located at the Site. Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility.

(ii) Evidence that crime rates are substantially decreasing, based on violent crime data from the city's police department or county sheriff's department, 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 would yield a crime rate below the threshold indicated in this section. 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. A map plotting all instances of violent crimes within a one-half mile radius of the Development Site may also be provided that reflects that the crimes identified are not at a level that would warrant an ongoing concern. The data must include incidents reported during the entire 2015 and 2016 calendar year. 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 local police department or local law enforcement agency, 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. For Rehabilitation or Reconstruction Developments, to the extent that the high level of criminal activity is concentrated at the Development Site, documentation may be submitted to indicate such issue(s) could be remedied by the proposed Development. Evidence of such remediation should go beyond what would be considered a typical scope of work and should include a security plan, partnerships with external agencies, or other efforts to be implemented that would deter criminal activity. Information on whether such security features have been successful at any of the Applicant's existing properties should also be submitted, if applicable.

(iii) Evidence of mitigation efforts to address blight or abandonment may include new construction in the area already underway that evidences public and/or private investment. Acceptable mitigation to address extensive blight should go beyond the acquisition or demolition of the blighted property and identify the efforts and timeline associated with the completion of a desirable permanent use of the site(s) such as new or rehabilitated housing, new business, development and completion of dedicated municipal or county-owned park space. In instances where blight exists but may only include a few properties, mitigation efforts could include partnerships with local agencies to engage in community-wide clean-up efforts, or other efforts to address the overall condition of the neighborhood.

(iv) Evidence of mitigation for all of the schools in the attendance zone that have not achieved Met Standard will include documentation from a school official with oversight of the school in question that indicates current progress towards meeting the goals and performance objectives identified in the Campus Improvement Plan. For schools that have not achieved Met Standard for two consecutive years, a letter from the superintendent, member of the school board or a member of the transformation team that has direct experience, knowledge and oversight of the specific school must also be submitted. The letter should, at a minimum and 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, and long-term trends that would point toward their achieving Met Standard 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. In addition to the aforementioned letter from the school official, information should also be provided that addresses the types of services and activities offered at the Development or external partnerships that will facilitate and augment classroom performance.

(E) In order for the Development Site to be found eligible by the Board, despite the existence of undesirable neighborhood characteristics, the Board must find that the use of Department funds at the Development Site must be consistent with achieving the goals in clauses (i) and (ii) of this subparagraph.

(i) Preservation of existing occupied affordable housing units to ensure they are safe and suitable or development of new high quality affordable housing units that are subject to federal rent or income restrictions; and

(ii) Factual determination that the undesirable characteristic(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. Such information sufficiently supports a conclusion that the characteristic(s) will be remedied by the time the Development places into service.

(b) Development Requirements and Restrictions. The purpose of this section is to identify specific restrictions on a proposed Development submitted for multifamily funding by the Department.

(1) Ineligible Developments. A Development shall be ineligible if any of the criteria in subparagraphs (A) or (B) of this paragraph are deemed to apply.

(A) General Ineligibility Criteria.

(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 the §42(i)(3)(B)(iii) and (iv) of the Code);

(ii) Any Development with any building(s) with four or more stories that does not include an elevator;

(iii) A Housing Tax Credit Development that provides on-site continual or frequent nursing, medical, or psychiatric ser-

vices. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living;

(iv) A Development that violates §1.15 of this title (relating to Integrated Housing Rule);

(v) A Development seeking Housing Tax Credits that will not meet the general public use requirement under Treasury Regulation, §1.42-9 or a documented exception thereto; or

(vi) A Development utilizing a Direct Loan that is subject to the Housing and Community Development Act, §104(d) requirements and proposing Rehabilitation, Reconstruction or Adaptive Reuse, if the Applicant is not proposing at least the one-for-one replacement of the existing unit mix. Adding additional units would not violate this provision.

(B) Ineligibility of Elderly Developments.

(i) Any Elderly Development of two stories or more that does not include elevator service for any Units or living space above the first 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, and/or security officer. These employee Units must be specifically designated as such; or

(iii) Any Elderly Development (including Elderly in a Rural Area) proposing more than 70 percent two-bedroom Units.

(2) Development Size Limitations. The minimum Development size is 16 Units. New Construction or Adaptive Reuse Developments in Rural Areas are limited to a maximum of 80 Units. Other 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. The minimum Rehabilitation amounts identified in subparagraphs (A) - (C) of this paragraph must be maintained through the issuance of IRS Forms 8609.

(A) For Housing Tax Credit Developments under the USDA Set-Aside the minimum Rehabilitation will involve at least $25,000 per Unit in Building Costs and Site Work;

(B) For Tax-Exempt Bond Developments, less than twenty (20) years old, based on the placed in service date, the minimum Rehabilitation will involve at least $25,000 per Unit in Building Costs and Site Work. If such Developments are greater than twenty (20) years old, based on the placed in service date, the minimum Rehabilitation will involve at least $30,000 per Unit in Building Costs and Site Work; or

(C) For all other Developments, the minimum 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) - (M) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (D) - (M) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), (I), or (M) of this paragraph; however, access must be provided to a comparable amenity in a common area. All amenities listed below must be at no charge to the tenants. Tenants must be provided written notice of the applicable required amenities for the Development.

(A) All Units must be wired with RG-6/U COAX or better and CAT3 phone cable or better, wired to each bedroom, dining room and living room;

(B) Laundry connections;

(C) Exhaust/vent fans (vented to the outside) in the bathrooms;

(D) Solar screens on all windows (north-facing windows may exclude solar screens if north-facing operable windows provide insect screens);

(E) Disposal and Energy-Star rated dishwasher (not required for USDA; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit);

(F) Energy-Star rated refrigerator;

(G) Oven/Range;

(H) Blinds or window coverings for all windows;

(I) At least one Energy-Star rated ceiling fan per Unit;

(J) Energy-Star rated lighting in all Units which may include compact fluorescent or LED light bulbs;

(K) Plumbing fixtures must meet performance standards of Texas Health and Safety Code, Chapter 372;

(L) All Units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units only or historic preservation where central would be cost prohibitive); and

(M) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be one and a half (1.5) spaces per Unit for non- Elderly Developments and one (1) space per Unit for Elderly Developments. The minimum number of required spaces must be available to the tenants at no cost.

(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. For Developments with 41 Units or more, at least two (2) of the required threshold points must come from subparagraph (C)(xxxi) of this paragraph.

(i) Developments with 16 to 40 Units must qualify for four (4) points;

(ii) Developments with 41 to 76 Units must qualify for seven (7) points;

(iii) Developments with 77 to 99 Units must qualify for ten (10) points;

(iv) Developments with 100 to 149 Units must qualify for fourteen (14) points;

(v) Developments with 150 to 199 Units must qualify for eighteen (18) points; or

(vi) Developments with 200 or more Units must qualify for twenty-two (22) points.

(B) These points are not associated with any selection criteria points. The amenities must be for the benefit of all tenants

and made available throughout normal business hours and maintained throughout the Affordability Period. Tenants must be provided written notice of the elections made by the Development Owner. If fees 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 accessibility standards and spaces for activities must be sized appropriately to serve the proposed Target Population. 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, which includes those amenities required under subparagraph (C)(xxxiii) of this paragraph. If scattered site with fewer than 41 Units per site, at a minimum at least some of the amenities required under subparagraph (C)(xxxiii) of this paragraph must be distributed proportionately across all sites. 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. For example, if a swimming pool exists on the phase one property and it is anticipated that the second phase tenants will be allowed it use it, the swimming pool cannot be claimed for points for purposes of this requirement for the second phase Development. All amenities must be accessible and must be available to all units via an accessible route.

(C) The common amenities and respective point values are set out in clauses (i) - (xxxii) of this subparagraph. Some amenities may be restricted for Applicants proposing a specific Target Population. 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) Full perimeter fencing that includes parking areas and all amenities (excludes guest or general public parking areas) (2 points);

(ii) Controlled gate access (2 points);

(iii) Gazebo or covered pavilion w/sitting area (1 point);

(iv) Accessible walking/jogging path separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point);

(v) Community laundry room with at least one washer and dryer for every 40 Units (3 points);

(vi) Barbecue grill and picnic table with at least one of each for every 50 Units (1 point);

(vii) Swimming pool (3 points);

(viii) Splash pad/water feature play area (1 point);

(ix) Furnished fitness center. Equipped with fitness equipment options with at least one option per every 40 Units or partial increment of 40 Units: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, sauna, stair-climber, or other similar equipment. Equipment shall be commercial use grade or quality. All Developments must have at least two equipment options but are not required to have more than five equipment options regardless of number of Units (2 points);

(x) Equipped and functioning business center or equipped computer learning center. Must be equipped with 1 computer for every 40 Units loaded with basic programs (maximum of 5 computers needed), 1 laser printer for every 3 computers (minimum of one printer) and at least one scanner which may be integrated with printer (2 points);

(xi) Furnished Community room (1 point);

(xii) Library with an accessible sitting area (separate from the community room) (1 point);

(xiii) Enclosed community sun porch or covered community porch/patio (1 point);

(xiv) Service provider office in addition to leasing offices (1 point);

(xv) Regularly staffed service provider office in addition to leasing offices (3 points);

(xvi) Activity Room stocked with supplies (Arts and Crafts, etc.) (2 points);

(xvii) Health Screening Room (1 point);

(xviii) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point);

(xix) Horseshoe pit; putting green; shuffleboard court; pool table; or video game console(s) with a variety of games and a dedicated location accessible to all tenants to play such games (1 point);

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

(xxi) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot (2 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, provide shade and ultraviolet protection. Can only select this item if clause (xxii) of this subparagraph is not selected; or

(xxii) Two Children's Playscapes Equipped for 5 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, provide shade and ultraviolet protection. Can only select this item if clause (xxi) of this subparagraph is not selected;

(xxiii) Sport Court (Tennis, Basketball or Volleyball) (2 points);

(xxiv) Furnished and staffed Children's Activity Center that must have age appropriate furnishings and equipment. Appropriate levels of staffing must be provided during after-school hours and during school vacations (3 points);

(xxv) Community Theater Room equipped with a 52 inch or larger screen or projection with surround sound equipment; DVD player; and theater seating (3 points);

(xxvi) Dog Park area that is fully enclosed and intended for tenant owned dogs to run off leash or a dog wash station with plumbing for hot and cold water connections and tub drainage (requires that the Development allow dogs) (1 point);

(xxvii) Common area Wi-Fi (1 point);

(xxviii) Twenty-four hour, seven days a week monitored camera/security system in each building (3 points);

(xxix) Bicycle parking 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);

(xxx) Shaded rooftop or structural viewing deck of at least 500 square feet (2 points);

(xxxi) Porte-cochere (Elderly Developments Only) (1 point); or

(xxxii) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Points may be selected from only one of four categories: Limited Green Amenities, Enterprise Green Communities, Leadership in Energy and Environmental Design (LEED), and ICC 700 National Green Building Standard. A Development may qualify for no more than four (4) points total under this clause.

(I) Limited Green Amenities (2 points). The items listed in subclauses (I) - (IV) of this clause constitute the minimum requirements for demonstrating green building of multifamily Developments. Six (6) of the twenty-two (22) items listed under items (-a-) - (-v-) of this subclause must be met in order to qualify for the maximum number of two (2) points under this subclause;

(-a-) a rain water harvesting/collection system and/or locally approved greywater collection system;

(-b-) newly installed native trees and plants that minimize irrigation requirements and are appropriate to the Development Site's soil and microclimate to allow for shading in the summer and heat gain in the winter. For Rehabilitation Developments this would be applicable to new landscaping planned as part of the scope of work;

(-c-) water-conserving fixtures that meet the EPA's WaterSense Label. Such fixtures must include low-flow or high efficiency toilets, bathroom lavatory faucets, showerheads, and kitchen faucets. Rehabilitation Developments may install WaterSense faucet aerators (minimum of 30% more efficient) instead of replacing the entire faucets;

(-d-) all of the HVAC condenser units located so they are fully shaded 75 percent of the time during summer months (i.e. May through August) as certified by the design team at cost certification;

(-e-) Energy-Star qualified water heaters or install those that are part of an overall Energy-Star efficient system;

(-f-) install individual or sub-metered utility meters for electric and water. Rehabilitation Developments may claim sub-meter only if not already sub-metered at the time of Application;

(-g-) healthy finish materials including the use of paints, stains, and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standard;

(-h-) install daylight sensor, motion sensors or timers on all exterior lighting and install fixtures that include automatic switching on timers or photocell controls for all lighting not intended for 24-hour operation or required for security;

(-i-) recycling service (includes providing a storage location and service for pick-up) provided throughout the Compliance Period;

(-j-) construction waste management system provided by contractor that meets LEEDs minimum standards;

(-k-) for Rehabilitation Developments clothes dryers vented to the outside;

(-l-) for Developments with 41 units or less, at least 25% by cost FSC certified salvaged wood products;

(-m-) locate water fixtures within 20 feet of water heater;

(-n-) drip irrigate at non-turf areas;

(-o-) radiant barrier decking for New Construction Developments or other "cool" roofing materials;

(-p-) permanent shading devices for windows with solar orientation (does not include solar screens, but may include permanent awnings, black-out shades, fixed overhangs, etc.);

(-q-) Energy-Star certified insulation products (For Rehabilitation Developments, this would require installation in all places where insulation could be installed, regardless of whether the area is part of the scope of work);

(-r-) full cavity spray foam insulation in walls;

(-s-) Energy-Star rated windows;

(-t-) FloorScore certified flooring;

(-u-) sprinkler system with rain sensors;

(-v-) NAUF (No Added Urea Formaldehyde) cabinets.

(II) Enterprise Green Communities (4 points). 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.

(III) LEED (4 points). 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).

(IV) ICC 700 National Green Building Standard (4 points). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NAHB Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(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.

(i) five hundred (500) square feet for an Efficiency Unit;

(ii) six hundred (600) square feet for a one Bedroom Unit;

(iii) eight hundred (800) square feet for a two Bedroom Unit;

(iv) one thousand (1,000) square feet for a three Bedroom Unit; and

(v) one thousand, two-hundred (1,200) square feet for a four Bedroom Unit.

(B) Unit and Development Construction 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 seven (7) points. Direct Loan Applications not layered with Housing Tax Credits must include enough amenities to meet a minimum of four (4) 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 will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

(i) Covered entries (0.5 point);

(ii) Nine foot ceilings in living room and all bedrooms (at minimum) (0.5 point);

(iii) Microwave ovens (0.5 point);

(iv) Self-cleaning or continuous cleaning ovens (0.5 point);

(v) Refrigerator with icemaker (0.5 point);

(vi) 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);

(vii) Energy-Star qualified laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (1.5 points);

(viii) Covered patios or covered balconies (0.5 point);

(ix) Covered parking (including garages) of at least one covered space per Unit (1.5 points);

(x) Meet current R-value requirements (rating of wall/ceiling system) of IECC for the Development's climate zone (1.5 points);

(xi) 14 SEER HVAC (or greater) or 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 (1.5 points);

(xii) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);

(xiii) Built-in computer nook (0.5 point);

(xiv) Built-in shelving unit (0.5 point);

(xv) Floor to ceiling kitchen cabinetry (1 point);

(xvi) Recessed or track LED lighting in kitchen and living areas (1 point);

(xvii) Thirty (30) year shingle or metal roofing (excludes Thermoplastic Polyolefin (TPO) roofing material) (0.5 point); and

(xviii) Greater than 30 percent 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).

(7) Tenant Supportive Services. The supportive services include those listed in subparagraphs (A) - (Z) of this paragraph. Tax Exempt Bond Developments must select a minimum of eight (8) points; Direct Loan Applications not layered with Housing Tax Credits must include enough services to meet a minimum of four (4) 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 chapter (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. The services provided should be those that will directly benefit the Target Population of the Development. Tenants must be provided written notice of the elections made by the Development Owner. No fees may be charged to the tenants 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.

(A) partnership with local law enforcement to provide regular 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.) (3 points);

(B) weekday character building program (shall include at least on a monthly basis a curriculum based character building presentation on relevant topics, for example teen dating violence, drug prevention, bullying, teambuilding, internet/social media dangers, stranger danger, etc.) (2 points);

(C) daily transportation such as bus passes, cab vouchers, specialized van on-site (4 points);

(D) 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 tenant (1 point);

(E) GED preparation classes (shall include an instructor providing on-site coursework and exam) (2 points);

(F) English as a second language classes (shall include an instructor providing on-site coursework and exam) (1 point);

(G) quarterly financial planning courses (i.e. homebuyer education, credit counseling, investing advice, retirement plans, etc.). Courses must be offered through an on-site instructor; a CD or online course is not acceptable (1 point);

(H) annual health fair provided by a health care professional(1 point);

(I) quarterly health and nutritional courses (1 point);

(J) organized youth programs or other recreational activities such as games, movies or crafts offered by the Development (1 point);

(K) scholastic tutoring (shall include daily (Monday - Friday) homework help or other focus on academics) (3 points);

(L) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);

(M) weekly exercise classes (offered at times when most residents would be likely to attend) (2 points);

(N) twice monthly arts, crafts, and other recreational activities *(e.g.,* Book Clubs and creative writing classes) (2 points);

(O) annual income tax preparation (offered by an income tax prep service) (1 point);

(P) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point);

(Q) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, etc.) (1 point);

(R) specific case management services offered by a qualified Owner or Developer or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (1 point);

(S) 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);

(T) 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);

(U) contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; also 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);

(V) external partnerships for provision of weekly substance abuse meetings at the Development Site (2 points);

(W) 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);

(X) a full-time resident services coordinator with a dedicated office space at the Development (2 points);

(Y) a resident-run community garden with annual soil preparation and mulch provided by the Owner and access to water (1 point); and

(Z) Development Sites located within a one mile radius of one of the following can also qualify for one (1) point provided they also have a referral process in place and provide transportation to and from the facility:

(i) Facility for treatment of alcohol and/or drug dependency;

(ii) Facility for treatment of PTSD and other significant psychiatric or psychological conditions;

(iii) Facility providing therapeutic and/or rehabilitative services relating to mobility, sight, speech, cognitive, or hearing impairments; or

(iv) Facility providing medical and/or psychological and/or psychiatric assistance for persons of limited financial means.

(8) Development Accessibility Requirements. All Developments must meet all specifications and accessibility requirements as identified in subparagraphs (A) - (C) 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) New Construction (excluding New Construction of non-residential buildings) Developments where some Units are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit Type of otherwise exempt units *(i.e.,*, one bedroom one bath, two bedroom one bath, two bedroom two bath, three bedroom two bath) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level.

(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.

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, 2016.

TRD-201604748
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 475-3344

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SUBCHAPTER C. APPLICATION SUBMISSION REQUIREMENTS, INELIGIBILITY CRITERIA, BOARD DECISIONS AND WAIVER OF RULES OR PRE-CLEARANCE FOR APPLICATIONS

10 TAC §§10.201 - 10.207

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications, §§10.201 - 10.207. The purpose of the repeal is to allow for the replacement of the existing sections with new sections that encompass requirements for all applications applying for multifamily funding through the Department. Proposed new §§10.201 - 10.207 are being published concurrently with this rulemaking.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in

effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be the replacement of the sections with new sections that encompass requirements for all applications applying for multifamily funding through the Department. There is no new or additional economic cost to any persons required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 23, 2016 to October 14, 2016, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Sharon Gamble, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to sharon.gamble@tdhca.state.tx.us, or by fax to (512) 475-0764, attn: Sharon Gamble. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. AUSTIN LOCAL TIME OCTOBER 14, 2016.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Tex. Gov't Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed repeal affects Tex. Gov't Code Chapter 2306, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The repeal affects no other statutes, articles or codes.

§10.201. Procedural Requirements for Application Submission.

§10.202. Ineligible Applicants and Applications.

§10.203. Public Notifications.

§10.204. Required Documentation for Application Submission.

§10.205. Required Third Party Reports.

§10.206. Board Decisions.

§10.207. Waiver of Rules for 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, 2016.

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Timothy K. Irvine
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Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3344

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10 TAC §§10.201 - 10.207

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter C §§10.201 - 10.207, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications. The purpose of the proposed new sections is to provide guidance for application submission, define what would cause an applicant and application to be ineligible for consideration of multifamily funding, and explain processes regarding Board decisions. The proposed repeal of existing Subchapter C is published concurrently with this rulemaking.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to new costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be to provide additional clarity regarding requirements for application submission, define ineligible applicants and applications, and explain processes regarding Board decisions. The 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.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new or additional economic effect on small or micro-businesses. The 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.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 23, 2016, to October 14, 2016, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Sharon Gamble, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to sharon.gamble@tdhca.state.tx.us, or by fax to (512) 475-0764, Attention Sharon Gamble. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. AUSTIN LOCAL TIME OCTOBER 14, 2016.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new sections affect Chapter 2306 of the Texas Government Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The new sections affect no other statutes, articles or codes.

§10.201. Procedural Requirements for Application Submission.

This subchapter establishes the procedural requirements for Application submission. Only one Applicant may have an Application or Applications for assistance relating to a specific Development Site at any given time. 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)

regarding pre-application Site changes. Applicants are subject to the schedule of fees as set forth in §10.901 of this chapter (relating to Fee Schedule). When providing a pre-application, Application or other materials to a state representative, local governmental body, Neighborhood Organization, or anyone else to secure support or approval that may affect the Applicant's competitive posture, an Applicant must disclose that in accordance with the Department's rules aspects of the Development may not yet have been determined or selected or may be subject to change, such as changes in the amenities ultimately selected and provided.

(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 §10.901 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 three business days 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 an Applicant chooses to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. 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 provided in digital media are fully readable by the Department. Department staff receiving an application may perform a cursory review to see if there are any glaring problems. This is a cursory review and may not be relied upon as confirmation that the Application was complete or in proper form.

(C) The Applicant must upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. 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 (e.g., Third Party Reports) outside the Uniform Application must also be uploaded to the secure web transfer server. It is the responsibility of the Applicant to confirm the upload to the Department's secure web transfer server was successful and to do so in advance of the deadline. Where there are instances of computer problems, mystery glitches, etc. that prevents the Application from being received by the Department prior to the deadline the Application may be terminated.

(D) Applications must include materials addressing each and all of the items enumerated in this chapter and other chapters as applicable. If an Applicant does not believe that a specific item should be applied, the Applicant must include, in its place, a statement identifying the required item, stating that it is not being supplied, and a statement as to why the Applicant does not believe it should be required.

(2) Filing of Application for Tax-Exempt Bond Developments. Applications may be submitted to the Department as described in subparagraphs (A) and (B) of this paragraph. Multiple site applications by the same Applicant for Tax-Exempt Bond Developments will be considered to be one Application as identified in Tex. Gov't Code, Chapter 1372. Applications will be required to satisfy the requirements of the Qualified Allocation Plan (QAP) and Uniform Multifamily Rules in place at the time the Application is received by the Department. Applications that receive a Traditional Carryforward designation after November 15 will not be accepted until after January 2 and will be subject to the QAP and Uniform Multifamily Rules in place at the time the Application is received by the Department.

(A) Lottery Applications. For Applicants participating in the TBRB lottery for private activity bond volume cap and whereby advance notice is given regarding a Certificate of Reservation, the Applicant must submit a Notice to Submit Lottery Application form to the Department no later than the Notice to Submit Lottery Application Delivery Date described in §10.4 of this chapter (relating to Program Dates). The complete Application, accompanied by the Application Fee described in §10.901 of this chapter must be submitted no later than the Applications Associated with Lottery Delivery Date described in §10.4 of this chapter.

(B) Waiting List Applications. Applications designated as Priority 1 or 2 by the TBRB and receiving advance notice of a Certificate of Reservation for private activity bond volume cap must submit Parts 1 - 4 of the Application and the Application Fee described in §10.901 of this chapter prior to the issuance of the Certificate of Reservation by the TBRB. The remaining parts of the Application must be submitted at least seventy-five (75) days prior to the Board meeting at which the decision to issue a Determination Notice would be made. An Application designated as Priority 3 will not be accepted until after the issuer has induced the bonds, with such documentation included in the Application, and is subject to the following additional timeframes:

(i) The Applicant must submit to the Department confirmation that a Certificate of Reservation from the TBRB has been issued not more than thirty (30) days after the Application is received by the Department. The Department may, for good cause, administratively approve an extension for up to an additional thirty (30) days to submit confirmation the Certificate of Reservation has been issued. The Application will be terminated if the Certificate of Reservation is not received within the required timeframe;

(ii) The Department will require at least seventy-five (75) days to review an Application, unless Department staff can complete its evaluation in sufficient time for Board consideration. Applicants should be aware that unusual financing structures, portfolio transactions, and the need to resolve Administrative Deficiencies may require additional time to review and the prioritization of Applications will be subject to the review priority established in paragraph (6) of this subsection;

(iii) Department staff may choose to delay presentation to the Board in instances in which an Applicant is not reasonably expected to close within sixty (60) days of the issuance of a Determination Notice. Applications that receive Traditional Carryforward will be subject to closing within the same timeframe as would be typical of the Certificate of Reservation. This will be a condition of the award and reflected in the Determination Notice.

(3) Certification of Tax Exempt Bond Applications with New Docket Numbers. Applications that receive an affirmative Board Determination, but for which closing on the bonds does not occur prior to the Certificate of Reservation expiration date, and which subsequently have that docket number withdrawn from the TBRB, may have their Determination Notice reinstated. In the event that the Department's Board has not yet approved the Application, the

Application will continue to be processed and ultimately provided to the Board for consideration The Applicant would need to receive a new docket number from the TBRB and meet the requirements described in subparagraphs (A) - (C) of this paragraph:

(A) The Application must remain unchanged, which means that at a minimum, the following cannot have changed: Site Control, total number of Units, unit mix (bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, Target Population, scoring criteria (if TDHCA is bond issuer) or TBRB priority status including the effect on the inclusive capture rate. The entities involved in the Applicant entity and Developer cannot change; however, the certification can be submitted even if the lender, syndicator or issuer changes, as long as the financing structure and terms remain unchanged. Notifications under §10.203 of this chapter (relating to Public Notifications (§2306.6705(9)) are not required to be reissued. A revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. This certification must be submitted no later than thirty (30) calendar days after the date the TBRB issues the new docket number; or

(B) the new docket number may not be issued more than four (4) months from the date the original application was withdrawn from the TBRB. The new docket number must be from the same program year as the original docket number or, for Applications that receive a new docket number from the program year that is immediately succeeding the program year of the original docket number, the requirements in clauses (i) and (ii) of this subparagraph must be met:

(i) The Applicant must certify that the Development will meet all rules and requirements in effect at the time the new docket number is issued; and

(ii) The Department must determine that the changes in the rules applicable to the program(s) under which the Application was originally awarded are not of a material nature that would necessitate a new Application and that any new forms and clarifications to the Application are of a nature that can be resolved through the Administrative Deficiency process; or

(C) if there are changes to the Application as referenced in subparagraph (A) of this paragraph or if such changes in the rules pursuant to subparagraph (B)(ii) of this paragraph are of a material nature the Applicant will be required to submit a new Application in full, along with the applicable fees, to be reviewed and evaluated in its entirety for a new Determination Notice to be issued. If there is public opposition but the Application remains the same pursuant to subparagraph (A) of this paragraph, a new Application will not be required to be submitted; however, the Application must be presented before the Board for consideration of the re-issuance of the Determination Notice.

(4) 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.

(5) Evaluation Process. Priority Applications, which shall include those 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 prioritized based upon the likelihood that an Application will be competitive for an award based upon the 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's priority, 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. Applications deemed to be priority Applications may change from time to time. 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 §10.302 of this chapter (relating to Underwriting Rules and Guidelines) and §10.307 of this chapter (relating to Direct Loan Requirements). 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 §10.101(a)(3) (relating to Undesirable Neighborhood Characteristics). The Department will, from time to time during the review process, publish an application log which shall include the self-score and any scoring adjustments made by staff. The posting of such scores on the application log may trigger appeal rights and corresponding deadlines pursuant to Tex. Gov't. Code §2306.6715 and §10.902 of this chapter (relating to Appeals Process). The Department may also provide a courtesy scoring notice reflecting such score to the Applicant.

(6) Prioritization of Applications under various Programs. This paragraph identifies how ties or other prioritization matters will be handled when dealing with de-concentration requirements, capture rate calculations, and general review priority of Applications submitted under different programs.

(A) De-concentration and Capture Rate. Priority will be established based on the earlier date associated with an Application. The dates that will be used to establish priority are as follows:

(i) For Tax-Exempt Bond Developments, the issuance date of the Certificate of Reservation issued by the TBRB; and

(ii) For all other Developments, the date the Application is 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. Review priority for 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. In general, those with statutory deadlines or more restrictive deadlines will be prioritized for review and processing ahead of those that are not subject to the same constraints. In general, any non-Competitive Housing Tax Credit Applications received during the competitive tax credit round that include a request to be placed on the May, June or July Board agendas will not be prioritized for review or underwriting due to the statutory constraints on the award and allocation of competitive tax credits. Applicants are advised to keep this in consideration when planning the submission of an Application and issuance of the Certificate of Reservation.

(7) Administrative Deficiency Process. The purpose of the Administrative Deficiency process is to allow an Applicant to provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency

notice. 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 by the Applicant in the Application. 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. 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 that they in fact implicated matters of a material nature 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 an Administrative Deficiency as well as the distinction between material and non-material missing information are reserved for the Director of Multifamily Finance, Executive Director, and Board.

(A) It is critical that the use of the Administrative Deficiency process not unduly slow the review process, and since the process is intended to clarify or correct matters or obtain non-material missing information (that should already be in existence), there is a reasonable expectation that a party responding to an Administrative Deficiency will be able to respond immediately. It is the responsibility of a person who receives an Administrative Deficiency to address the matter fully by the close of business on the date by which resolution must be complete and the Administrative 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 a point deduction or termination.

(B) Administrative Deficiencies for Competitive HTC Applications. Unless an extension has been timely requested and granted, if an Administrative Deficiency is not fully resolved to the satisfaction of the Department by 5:00 p.m. on the third business day following the date of the deficiency notice, then (1 point) shall be deducted from the selection criteria score. For each additional two (2) days the deficiency remains unresolved an additional (1 point) shall be deducted from the selection criteria score. If Administrative 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 have (3 points) deducted and be terminated, subject 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) To the extent that the review of Administrative 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.

(C) Administrative Deficiencies for all other Applications or sources of funds. If Administrative Deficiencies are not 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 an Administrative Deficiency Notice Late Fee of $500 for each business day the deficiency remains unresolved will be assessed, and the Application will not be presented to the Board for consideration until all outstanding fees have been paid. Applications with unresolved deficiencies after 5:00 p.m. on the tenth day following the date of the deficiency notice will be terminated or suspended from further processing so long as the active Application does not impact the processing or underwriting of other Applications. The Applicant will be responsible for the payment of fees accrued pursuant to this paragraph regardless of any termination. Department staff may or may not assess an Administrative Deficiency Notice Late Fee for or terminate Applications for Tax-Exempt Bond or Direct Loan Developments during periods when private activity bond volume cap or Direct Loan funds are undersubscribed. Applicants should be prepared for additional time needed for completion of staff reviews as described in paragraph (2)(B) of this section.

(8) Limited Priority Reviews. If, after the submission of the Application, an Applicant identifies an error in the Application that could likely be the subject of an Administrative Deficiency, the Applicant may request a limited priority 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 priority review may only cover the specific issue and not the entire Application. If the limited priority review results in the identification of an issue that requires correction or clarification, staff will request such through the Administrative Deficiency process as stated in paragraph (7) of this section, if deemed appropriate. A limited priority 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.

(9) 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 §10.4 of this chapter and no later than May 1, 2017 for Competitive HTC Applications. The Neighborhood Organization expressing opposition will be given seven (7) 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.

§10.202. 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. If such ineligibility is raised by non-staff members it must be made in writing to the Executive Director and the Applicant and must cite the specific ineligible criteria under paragraph (1) of this section and provide factual evidence to support the claim. Any unsupported claim or claim determined to be untrue may be subject to all remedies available to the Department or Applicant. Staff will make enquiry as it deems appropriate and present the matter to the Board, accompanied by staff's recommendation. The Board may take such action as it deems warranted by the facts presented, including any testimony that may be provided, either declining to take action, in which case the Applicant or Application, as applicable, remains eligible, or finding the Applicant is ineligible, or, for a matter relating to a specific Application, that that Application is ineligible. A Board finding of ineligibility is final. The items listed in this section include those requirements in §42 of the Code, 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 or a NOFA specific to the programmatic funding. 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.

(1) Applicants. An Applicant shall be considered ineligible if any of the criteria in subparagraphs (A) - (M) of this paragraph apply to the Applicant. If any of the criteria apply to any other member of the Development Team, the Applicant will also be deemed ineligible unless a substitution of that Development Team member is specifically allowable under the Department's rules and sought by the Applicant or appropriate corrective action has been accepted and approved by the Department. An Applicant is ineligible if the Applicant:

(A) has been or is barred, suspended, or terminated from procurement in a state or Federal program, including listed in HUD'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 fifteen (15) years preceding the Application submission;

(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;

(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;

(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 ten (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 twelve (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 falsified documentation or made other intentional or negligent material misrepresentations or omissions in or in connection with an Application or Commitment 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 re-affirmed or Department funds repaid; or

(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 ten (10) years or plans to or is negotiating to terminate their relationship with any other affordable housing development. Failure to disclose is grounds for termination. 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 termination based upon factors in the disclosure.

(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. An attempted but unsuccessful prohibited ex parte communication, such as a letter sent to one or more board members but not opened, may be cured by full disclosure in a public meeting, and the Board may reinstate the Application and establish appropriate consequences for cured actions, such as denial of the matters made the subject to the communication.

(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) or §2306.6733;

(ii) the Applicant proposes to replace in less than fifteen (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) of the are met.

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

A certification, as provided in the Application, that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be submitted with the Application. For Applications utilizing Competitive Housing Tax Credits, notifications must not be older than three (3) months from the first day of the Application Acceptance Period. For Tax-Exempt Bond Developments notifications and proof thereof must not be older than three (3) months prior to the date Parts 5 and 6 of the Application are submitted, and for all other Applications no older than three (3) months prior to the date the 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 percent or a 5 percent increase in density (calculated as units per acre) as a result of a change in the size of the Development Site. In addition, should a change in elected official occur between the submission of a pre-application and the submission of an Application, Applicants are required to notify the newly elected (or appointed) official within fourteen (14) days of when they take office.

(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 Full Application Delivery Date and whose boundaries include the 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 Application, all Neighborhood Organizations on record with the county or state as of 30 days prior to the Full Application Delivery Date and whose boundaries include the proposed Development Site as of the submission of the Application.

(2) Notification Recipients. No later than the date the Application is submitted, notification must be sent to all of the persons or 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 in the format required 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 encouraged 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 officials in office at the time the Application is submitted. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

(A) Neighborhood Organizations on record with the state or county as of 30 days prior to the Full Application Delivery Date whose boundaries include the 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) - (vi) 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.); and

(vi) the total number of Units proposed and total number of low-income Units proposed.

(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 serve a Target Population exclusively unless such 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.

§10.204. Required Documentation for Application Submission.

The purpose of this section is to identify the documentation that is required at the time of Application submission, unless specifically indicated or otherwise required by Department rule. If any of the documen-

tation indicated in this section is not resolved, clarified or corrected to the satisfaction of the Department through either original Application submission or the Administrative Deficiency process, the Application will be terminated. 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. 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.

(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 address 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, 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, and the Texas Public Information Act.

(C) All representations, undertakings and commitments made by Applicant in the Application process for Development assistance 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 each and all 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 tenants of the Development, including enforcement by administrative penalties for failure to perform, 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 percent 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 affirmatively market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will affirmatively market to veterans and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved by the Department.

(H) The Development Owner will comply with any and all notices required by the Department.

(I) If the Development has an existing LURA with the Department, the Development Owner will comply with the existing restrictions.

(2) Applicant Eligibility Certification. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by any individuals required to be listed on the organizational chart and also identified in subparagraphs (A)- (D) below. 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 §10.202 of this chapter (relating to Ineligible Applicants and Applications).

(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 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder;

(B) for non-profit 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; and

(D) for limited liability companies, all managers, managing members, members having a 10 percent 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.

(3) Architect Certification Form. The certification, addressing all of the accessibility requirements, must be executed by the Development engineer, an accredited architect or Third Party accessibility specialist. (§2306.6722; §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 awards 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 §10.203 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. In providing a resolution, a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any FHAST form on file, any current Analysis of Impediments to Fair Housing Choice, 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. 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 extraterritorial jurisdiction (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 §10.4 of this chapter (relating to Program Dates). 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 Application may be terminated. 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) and subparagraph (A) of this paragraph;

(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 subparagraph (B) of this paragraph; 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 2017 Application Round, such requests must be made no later than December 16, 2016. 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.

(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 fifty percent 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 2015 or 2016 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 through placement in service, who is also a Principal of the Developer, Development Owner, or General Partner must establish that they have experience in the development and placement in service of 150 units or more. 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) Experience may not be established for a Person who at any time within the preceding three years has been involved with affordable housing in another state in which the Person or Affiliate has been the subject of issued IRS Form 8823 citing non-compliance that has not been or is not being corrected with reasonable due diligence.

(D) If a Principal is determined by the Department to not have the required experience, an acceptable replacement for that Principal must be identified prior to the date the award is made by the Board.

(E) 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 pursuant to this chapter or elected in accordance with Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with §42(g) of the Code. The income and corresponding rent restrictions will be memorialized in a recorded LURA and monitored for compliance. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) and (ii) 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 and covered by a lender's policy of title insurance in their name;

(ii) Term sheets for interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money must:

(I) have been signed by the lender;

(II) be addressed to the Development Owner or Affiliate;

(III) for a permanent loan, include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization;

(IV) include either a committed and locked interest rate, or the currently projected interest rate and the mechanism for determining the 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

(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; or

(iii) For Developments proposing to refinance an existing USDA Section 515 loan, a letter from the USDA confirming that it has been provided with a complete loan transfer 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. 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. Permanent loans must include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization or for non-amortizing loan structures a term of not less than thirty (30) years. A term loan request must also 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 by a capital contribution 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 percent 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 will be added to the Deferred Developer Fee for feasibility purposes under §10.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where

scoring is concerned, unless 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) anticipated developer fees paid during construction;

(v) syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis; and

(vi) include an acknowledgement of the amounts and terms of all other anticipated sources of funds.

(E) Financing Narrative. (§2306.6705(1)) A narrative must be submitted that describes all aspects of the complete financing plan for the Development, including but not limited to, 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 commitments for all funding sources. For applicants requesting HOME funds, Match in the amount of at least 5 percent of the HOME funds requested 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 HOME funds. The information provided must be consistent with all other documentation in the Application.

(8) Operating and Development Cost Documentation.

(A) 15-year Pro forma. All Applications must include a 15-year pro forma estimate of operating expenses, in the form provided by the Department. Any "other" debt service included in the pro forma must include a description.

(B) Utility Allowances. This exhibit, as provided in the Application, must be submitted along with documentation from the source of the utility allowance estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate and must comply with the requirements of §10.614 of this chapter (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 be identified. "Miscellaneous" or other nondescript designations are not acceptable.

(D) Rent Schedule. This exhibit, as provided in the Application, must indicate the type of Unit designation based on the Unit's rent and income restrictions. The rent and utility limits available at the time the Application is submitted should be used to complete this exhibit. Gross rents 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. The unit mix and net rentable square footages must be consistent with the site plan and architectural drawings. For Units restricted in connection with Direct Loans, the restricted Units will generally be designated "floating" unless specifically disallowed under the program specific rules. For Applications that propose utilizing Direct Loan funds, at least 90 percent of the Units restricted in connection with the Direct Loan program must be available to households or families whose incomes do not exceed 60 percent of the Area Median Income.

(E) Development Costs. This exhibit, as provided in the Application, must include the contact information for the person providing the cost estimate and must meet the requirements of clauses (i) and (ii) of this subparagraph.

(i) Applicants must provide a detailed cost breakdown of projected Site Work costs (excluding site amenities), if any, prepared by a Third Party engineer or cost estimator. If Site Work costs (excluding site amenities) exceed $15,000 per Unit and are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis.

(ii) If costs for Off-Site Construction are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then the 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. 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 or proof of application for such funds must be provided. 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 current property owner is unwilling to provide the required documentation then a signed statement from the Applicant attesting to that fact must be submitted. 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 twelve (12) consecutive months ending not more than three (3) months from the first day of the Application Acceptance Period;

(II) the two (2) most recent consecutive annual operating statement summaries;

(III) the most recent consecutive six (6) 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 (6) 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 tenant names or vacancy;

(iii) a written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))

(iv) a relocation plan outlining relocation requirements and a budget with an identified funding source; (§2306.6705(6))

(v) any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or to ensure compliance with the Uniform Relocation Act and any other relocation laws or regulations as may be applicable; and

(vi) if applicable, evidence that the relocation plan has been submitted to all appropriate legal or governmental agencies or bodies. (§2306.6705(6))

(9) Architectural Drawings. All Applications must include the items identified in subparagraphs (A) - (D) of this paragraph, unless specifically stated otherwise, and must be consistent with all applicable exhibits throughout the Application. The drawings must have a legible scale and show the dimensions of each perimeter wall and floor heights.

(A) For all New Construction, Reconstruction and Adaptive Reuse Developments a site plan is submitted that includes the items identified in clauses (i)- (v) of this subparagraph and for all Rehabilitation Developments, the site plan includes the items identified in clauses (i)- ix) of this subparagraph:

(i) includes a unit and building type table matrix that is consistent with the Rent Schedule and Building/Unit Configuration forms provided in the Application;

(ii) identifies all residential and common buildings;

(iii) clearly delineates the flood plain boundary lines and shows all easements;

(iv) if applicable, indicates possible placement of detention/retention pond(s);

(v) indicates the location and number of the parking spaces;

(vi) indicates the location and number of the accessible parking spaces;

(vii) describes, if applicable, how flood mitigation or any other required mitigation will be accomplished;

(viii) delineates compliant accessible routes; and

(ix) indicates the distribution of accessible Units.

(B) Building floor plans must be submitted for each building type. Applications for Rehabilitation (excluding Reconstruction) are not required to submit building floor plans unless the floor plan changes. Applications for Adaptive Reuse are only required to include building plans delineating each Unit by number and type. Building floor plans must include square footage calculations for balconies, breezeways, corridors and any other areas not included in net rentable area;

(C) Unit floor plans for each type of Unit must be included in the Application and must include the square footage for each type of Unit. Applications for Adaptive Reuse are only required to include Unit floor plans for each distinct typical Unit type such as one-bedroom, two-bedroom and for all Unit types that vary in Net Rentable Area by 10 percent from the typical Unit; and

(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 thirty-six (36) months 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. Tax-Exempt Bond Lottery Applications must have Site Control valid through December 1 of the prior program year with the option to extend through March 1 of the current program year.

(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.

(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 forty-five (45) years remaining); or

(ii) a contract or option for lease with a minimum term of forty-five (45) years that includes a price; address and/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 and/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 §10.302 of this chapter, then the documentation as further described therein must be submitted in addition to that of subparagraph (B) of this paragraph.

(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.

(A) No Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision that has no zoning.

(B) Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating the Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development.

(C) Requesting a Zoning Change. The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate has made formal application for a required zoning change and that the jurisdiction has received a release whereby the applicant for the zoning change 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 (6) months prior to the beginning of the Application Acceptance Period, 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.

(A) The title commitment must list the name of the Development Owner as the proposed insured and lists 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) Organizational Charts. A chart must be submitted that clearly illustrates the complete organizational structure of the final 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. Nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors 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.

(B) Previous Participation. Evidence must be submitted that each entity shown on the organizational chart described in subparagraph (A) of this paragraph that the Development Owner and each Affiliate, including entities and individuals (unless excluded under 10 TAC Chapter 1, Subchapter C) has provided a copy of the completed previous participation information to the Department. Individual Principals of such entities identified on the organizational chart must provide the previous participation information, unless excluded from such requirement pursuant to Chapter 1 Subchapter C of this title. In addition, any Person (regardless of any Ownership interest or lack thereof) receiving more than 10 percent of the Developer Fee is also required to submit this information. The information must include a list of all developments that are, or were, previously under ownership or Control of the Applicant and/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 will authorize the parties overseeing such assistance to release compliance histories to the Department.

(14) Nonprofit Ownership. Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner shall submit the documentation identified in subparagraph (A) or (B) of this paragraph as applicable.

(A) Competitive HTC Applications. 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 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 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.

(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 §42(h)(5) of the Code 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 serv-

ing concurrently as a member of the board, from receiving material compensation for service on the board;

(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;

(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 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.

(15) Site Design and Development 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 for any New Construction or Reconstruction Development.

(A) Executive Summary as 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. The summary 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). Additionally, the overview should contain a summary of zoning requirements, subdivision requirements, property identification number(s) and millage rates for all taxing jurisdictions, development ordinances, fire department requirements, site ingress and egress requirements, building codes, and local design requirements impacting the Development (include website links but do not attach copies of ordinances). Careful focus and attention should be made regarding any atypical items materially impacting costs or the successful and timely execution of the Development plan.

(B) Survey or current plat 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 may not be older than twelve (12) months from the beginning of the Application Acceptance Period. Plats must include evidence that it has been recorded with the appropriate local entity and that, as of the date of submission, it is the most current plat. Applications proposing noncontiguous single family scattered sites are not required to submit surveys or plats at Application, but this information may be requested during the Real Estate Analysis review.

(C) Preliminary site plan 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 (include handicap spaces and ramps) 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.

(D) 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.

(16) Section 811 Project Rental Assistance Program. All Applications must meet the requirements of subparagraphs (A) or (B) of this paragraph. Applications that are unable meet the requirements of subparagraphs (A) or (B) must certify to that effect in the Application.

(A) Applicants must apply for and obtain a determination by the Department that an Existing Development is approved to participate in the Department's Section 811 Project Rental Assistance Program ("Section 811 PRA Program"). The approved Existing Development must commit at least 10 units to the Section 811 PRA Program. An approved Existing Development may be used to satisfy the requirements of this paragraph in more than one Housing Tax Credit or other Multifamily Housing program Application, as long as at the time of Carryover, Award Letter or Determination Notice, as applicable, a minimum of 10 Units are provided for each Development awarded housing tax credits or Direct Loan funds. Once an Applicant submits their Application, Applicants may not withdraw their commitment to satisfy the threshold criteria of this subparagraph, although an Applicant may request to utilize a different approved Existing Development than the one submitted in association with the awarded Application to satisfy this criteria. Existing Developments that are included in an Application that does not receive an award are not obligated to participate in the Section 811 PRA Program.

(B) Applicants that cannot meet the requirements of subparagraph (A) of this paragraph must submit evidence of such through a self-certification that the Applicant and any Affiliate do not have an ownership interest in or control of any Existing Development that would meet the criteria outlined in the Section 811 PRA Program Request for Applications, and if applicable, by submitting a copy of any rejection letter(s) that have been provided in response to the Request for Applications. In such cases, the Applicant is able to satisfy the threshold requirement of this paragraph through this subparagraph (B). Applications must meet all of the requirements in clauses (i) - (v) of this subparagraph. Applicants must commit at least 10 Units in the Development for which the Application(s) has been submitted for participation in the Section 811 PRA Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 PRA Program guidelines or other requirements limit the proposed Development to fewer than 10 Units. Once elected in the Application(s), Applicants may not withdraw their commitment to have the proposed Development participate in the Section 811 PRA Program unless the Department determines that the Development cannot meet all of the Section 811 PRA Program criteria or the Applicant chooses to request an amendment by Carryover, Award Letter, or subsequent to the issuance

of the Determination Notice but prior to closing (for Tax-Exempt Bond Developments), or to place the Units on an Approved Existing Development. If the Applicant or an Affiliate obtain an ownership interest in an Approved Existing Development, the Applicant can submit an Amendment request authorizing that the Application satisfies this criteria under subparagraph (A), not subparagraph (B). Such an Amendment request will be considered a non-material change that has not been implemented, and Applicants will not be subject to the amendment fee required under §10.901(13) (relating to Fee Schedule, Appeals and other Provisions).

(i) The Development must not be an ineligible Elderly Development;

(ii) Unless the Development is also proposing to use any federal funding, the Development must not be originally constructed before 1978;

(iii) The Development must have units available to be committed to the Section 811 PRA Program in the Development, meaning that those Units do not have any other sources of project-based rental assistance within 6 months of receiving Section 811 PRA Program assistance, not have an existing use restriction for Extremely Low-income households, and the Units do not have an existing restriction for Persons with Disabilities;

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

(v) No new construction activities of projects shall be located in the mapped 500-year floodplain or in the 100-year floodplain according to FEMA's Flood Insurance Rate Maps (FIRM). Rehabilitation Developments that have previously received HUD funding or obtained HUD insurance do not have to follow sections (i)- (iii) of this subparagraph. Existing structures may be assisted in these areas, except for sites located in coastal high hazard areas (V Zones) or regulatory floodways, but must meet the following requirements:

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

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

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

§10.205. Required Third Party Reports.

The Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), and the Market Analysis must be submitted no later than the Third Party Report Delivery Date as identified in §10.4 of this chapter (relating to Program Dates). For Competitive HTC Applications, the Environmental Site Assessment, Property Condition Assessment, 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 of this title (relating to Program Calendar for Competitive Housing Tax Credits) and the Market Analysis must be submitted no later than the Market Analysis Delivery Date as identified in §11.2 of this title. For Competitive HTC Applications, if the reports, in their entirety, are not received by the deadline, the Application will be terminated. An electronic copy of the report in the format of a single file containing all information and exhibits clearly labeled with the report type, Development name and Development location are required. All Third Party reports must be prepared in accordance with Subchapter D of this chapter (relating to Underwriting and Loan Policy). The Department may request additional information from the report provider or revisions to the report as needed. In instances of non-response by the report provider, the Department may substitute in-house analysis. The Department is not bound by any opinions expressed in the report.

(1) Environmental Site Assessment. This report, required for all Developments and prepared in accordance with the requirements of §10.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines), must not be dated more than twelve (12) months prior to the first day of the Application Acceptance Period. If this timeframe is exceeded, then a letter or updated report must be submitted, dated not more than three (3) months prior to the first day of the Application Acceptance Period 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) 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 those additional assessments and recommendations will be performed prior to closing. If the assessments require further mitigating recommendations, then evidence indicating 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 §10.303 of this chapter (relating to Market Analysis Rules and Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If the report is older than six (6) months, but not more than twelve (12) months prior to the first day of the Application Acceptance Period, 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 (6) months prior to the first day of the Application Acceptance Period and must be accompanied by the original Market Analysis.

(A) The report must be prepared by a disinterested Qualified Market Analyst approved by the Department in accordance with the approval process outlined in §10.303 of this chapter;

(B) Applications in the USDA Set-Aside proposing Rehabilitation with residential structures at or above 80 percent occupancy at the time of Application submission, the appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §10.304 of this chapter (relating to Appraisal Rules and Guidelines), will satisfy the requirement for a Market Analysis; however, the Department may request additional information as needed. (§2306.67055; §42(m)(1)(A)(iii))

(C) It is the responsibility of the Applicant to ensure that this analysis forms a sufficient basis for the Applicant to be able to use the information obtained to ensure that the Development will comply with fair housing laws.

(3) Property Condition Assessment (PCA). This report, required for Rehabilitation (excluding Reconstruction) and Adaptive

Reuse Developments and prepared in accordance with the requirements of §10.306 of this chapter (relating to Property Condition Assessment Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If the report is older than six (6) months, but not more than twelve (12) months prior to the first day of the Application Acceptance Period, the report provider may provide a statement that reaffirms the findings of the original PCA. The statement may not be dated more than six (6) months prior to the first day of the Application Acceptance Period and must be accompanied by the original PCA. For Developments which require a capital needs assessment from USDA the capital needs assessment may be substituted and may be more than six (6) 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 §10.306 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.

(4) Appraisal. This report, required for all Rehabilitation Developments and prepared in accordance with the requirements of §10.304 of this chapter, is required for any Application claiming any portion of the building acquisition in Eligible Basis, and Identity of Interest transactions pursuant to Subchapter D of this chapter, must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. For Developments that require an appraisal from USDA, the appraisal may be more than six (6) months old, as long as USDA has confirmed in writing that the existing appraisal is still acceptable.

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

The Board's decisions regarding awards shall be based upon the Department's and the Board's evaluation of the proposed Developments' consistency with, and fulfillment of, the criteria and requirements set forth in this chapter, Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) and other applicable Department rules and other applicable state, federal and local legal requirements, whether established in statute, rule, ordinance, published binding policy, 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 award recommendation or terminate the Application based on the Applicant's inability to demonstrate compliance with program requirements.

§10.207. Waiver of Rules for Applications.

(a) General Waiver Process. This waiver section, unless otherwise specified, is applicable to Subchapter A of this chapter (relating to General Information and Definitions), Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions), Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules for Applications), Subchapter D of this chapter (relating to Underwriting and Loan Policy), Subchapter E of this chapter (relating to Post Award and Asset Management Requirements), Subchapter F of this chapter (relating to Compliance Monitoring) Subchapter G of this chapter (relating to Fee Schedule, Appeals, and Other Provisions), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), and Chapter 13 (relating to Multifamily Direct Loan Program Rules). An Applicant may request a waiver 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 as part of another Board action request. Where appropriate, the Applicant is encouraged to submit with the requested waiver any plans for mitigation or alternative solutions. Any such request for waiver must be specific to the unique facts and circumstances of 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. Waiver requests that are limited to Development design and construction elements not specifically required in Tex. Gov't Code, Chapter 2306 must meet the requirements of paragraph (1) of this subsection. All other waiver requests must meet the requirements of paragraph (2) of this subsection.

(1) The waiver request must establish good cause for the Board to grant the waiver which may include limitations of local building or zoning codes, limitations of existing building structural elements for Adaptive Reuse or Rehabilitation (excluding Reconstruction) Developments, required amenities or design elements in buildings designated as historic structures that would conflict with retaining the historic nature of the building(s), or provisions of the design element or amenity that would not benefit the tenants due to limitations of the existing layout or design of the units for Adaptive Reuse or Rehabilitation (excluding Reconstruction) Developments. Staff may recommend the Board's approval for such a waiver if the Executive Director finds that the Applicant has established good cause for the waiver. 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 under this paragraph.

(2) The waiver request must establish how it is necessary to address circumstances beyond the Applicant's control and how, if the waiver is not granted, the Department will not fulfill some specific requirement of law. In this regard, the policies and purposes articulated in Tex. Gov't Code, §§2306.001, 2306.002, 2306.359, and 2306.6701, are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program.

(b) Waivers Granted by the Board. The Board, in its discretion, may waive any one or more of the rules in Subchapters A through G of this chapter, Chapter 11, Chapter 12 and Chapter 13, except no waiver shall be granted to provide directly or implicitly any forward commitments or any waiver that is prohibited by statute (i.e., statutory requirements may not be waived). The Board, in its discretion, may grant a waiver that is in response to a natural, federally declared disaster that occurs after the adoption of the multifamily rules to the extent authorized by a governor declared disaster proclamation suspending 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, 2016.

TRD-201604749

Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 475-3344

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SUBCHAPTER D. UNDERWRITING AND LOAN POLICY

10 TAC §§10.301 - 10.307

The Texas Department of Housing and Community Affairs (the "Department") proposes repeal of 10 TAC Chapter 10, Subchapter D, concerning Underwriting and Loan Policy, §§10.301 - 10.307. Proposed new Subchapter D is published concurrently with this repeal.

FISCAL NOTE. Mr. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repealed section(s) are in effect, enforcing or administering the repealed section(s) does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal sections are in effect, the public benefit anticipated as a result of the repealed sections will be the adoption of new rules to enhance the State's ability to provide decent, safe, sanitary and affordable housing. There will not be any economic cost to any individuation required to comply with the repealed sections.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small businesses or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 23, 2016, to October 14, 2016, to receive input on the repealed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Brent Stewart, or by email to bstewart@tdhca.state.tx.us, or by FAX to (512) 475-4420. ALL COMMENTS MUST BE RECEIVED BY 5:00 PM AUSTIN LOCAL TIME on OCTOBER 14, 2016.

STATUTORY AUTHORITY.

The repealed sections are proposed pursuant to Tex. Gov't code §2306.053, which authorizes the Department to adopt rules. The proposed repeals and amendments affect no other code, article or statute.

§10.301. General Provisions.

§10.302. Underwriting Rules and Guidelines.

§10.303. Market Analysis Rules and Guidelines.

§10.304. Appraisal Rules and Guidelines.

§10.305. Environmental Site Assessment Rules and Guidelines.

§10.306. Property Condition Assessment Guidelines.

§10.307. Direct Loan 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, 2016.

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 475-2973

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10 TAC §§10.301 - 10.307

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC, Chapter 10, Subchapter D, §§10.301 - 10.307 concerning Underwriting and Loan Policy. The purpose of the new rule is to provide the Department and participants in the Department's affordable housing programs guidance in awarding funds to properties that are economically viable and appropriate for their residents. Proposed repeal of Subchapter D is published concurrently with this rulemaking.

FISCAL NOTE. Mr. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will enhance the State's ability to provide decent, safe, sanitary and affordable housing. The cost to produce the Market Study report required under §10.303 should not increase as a result of the expanded description required for the market areas as the market analyst should already be conducting that work as a normal component of producing a market analysis.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small businesses or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 23, 2016, to October 14, 2016, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Brent Stewart, or by email to bstewart@tdhca.state.tx.us, or by FAX to (512) 475-4420. ALL COMMENTS MUST BE RECEIVED BY 5:00 PM AUSTIN LOCAL TIME on OCTOBER 14, 2016.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. The proposed sections and amendments affect no other code, article or statute.

§10.301. General Provisions.

(a) Purpose. This Subchapter applies to the underwriting, Market Analysis, appraisal, Environmental Site Assessment, Property Condition Assessment, and Direct Loan 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 the Department's portfolio. In addition, this Subchapter guides staff in making recommendations to the Executive Award and Review Advisory Committee (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.

(b) Appeals. Certain programs contain express appeal options. Where not indicated, §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715) includes general appeal procedures. In addition, the Department encourages the use of Alternative Dispute Resolution ("ADR") methods, as outlined in §10.904 of this chapter (relating to Alternative Dispute Resolution (ADR) Policy).

§10.302. Underwriting Rules and Guidelines.

(a) General Provisions. Pursuant to Texas Government 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, §42(m)(2) of the Internal Revenue Code of 1986 (the "Code"), requires the tax credits allocated to a Development not to exceed the amount necessary to assure feasibility. The rules adopted pursuant to the Texas Government Code and the Code are developed to result in a Credit Underwriting Analysis 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.

(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 the current Qualified Allocation Plan ("QAP") (10 TAC Chapter 11) or a Notice of Funds Availability ("NOFA"), as applicable, and the Uniform Multifamily Rules (10 TAC Chapter 10, Subchapters A - E and G).

(c) Recommendations in the Report. The conclusion of the Report 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 following:

(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 §10.3 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 cash flow loans 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 §10.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst and other market data sources. For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Gross Program Rent at 60% AMI. As an alternative, if the Applicant submits market rents that are up to 30% higher than the 60% AMI gross rent and the Applicant submits an investor commissioned market study with the application, the Underwriter has the discretion to use the market rents supported by the investor commissioned market study in consideration of the independently determined rents. The Applicant must also provide a statement by the investor indicating that they have reviewed the market study and agree with its conclusions.

(ii) Gross Program Rent. The Underwriter will use the Gross Program Rents for the year that is most current at the time the underwriting begins. When underwriting for a simultaneously funded competitive round, all Applications are underwritten with the Gross Program Rents for the same year. If Gross Program Rents are adjusted by the Department after the close of the Application Acceptance Period, but prior to publication of the Report, the Underwriter may adjust the Effective Gross Income ("EGI") to account for any increase or decrease in Gross Program Rents for the purposes of determining the reasonableness of the Applicant's EGI.

(iii) Contract Rents. The Underwriter will review rental assistance contracts to determine the Contract Rents currently

applicable to the Development. Documentation supporting the likelihood of continued rental assistance is also reviewed. The Underwriter will take into consideration the Applicant's intent to request a Contract Rent increase. At the discretion of the Underwriter, the Applicant's proposed rents may be used as the Pro Forma Rent, with the recommendations of the Report conditioned upon receipt of final approval of such an increase.

(iv) Utility Allowances. The Utility Allowances used in underwriting must be in compliance with all applicable federal guidance, and §10.614 of Subchapter F of this Chapter 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 $20 per Unit per month range. 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 additional fee for such amenity must be excluded from Eligible Basis.

(C) Vacancy and Collection Loss. The Underwriter generally uses a normalized vacancy rate of 7.5 percent (5 percent vacancy plus 2.5 percent for collection loss). The Underwriter may use other assumptions based on conditions in the immediate market area. 100 percent project-based rental subsidy developments and other well documented cases may be underwritten at a combined 5 percent at the discretion of the Underwriter if the immediate market area's historical performance reflected in the Market Analysis is consistently higher than a 95 percent occupancy rate.

(D) Effective Gross Income ("EGI"). EGI is the total of Collected Rent for all units plus Miscellaneous Income less Vacancy and Collection Loss. If the Applicant's pro forma EGI is within 5 percent 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. Typically, 5 percent of EGI is used, though higher percentages for rural transactions may be used. Percentages as low as 3 percent may be used if well 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 percent or a comparable assessed value may be used.

(ii) If the Applicant proposes a property tax exemption or PILOT agreement the Applicant must provide documentation in accordance with §10.402(d). At the underwriter's discretion, such documentation may be required prior to Commitment 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 Property Condition Assessment ("PCA"). 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 PCA 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. This category does not include depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees.

(K) Tenant Services--Tenant 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 tenant supportive services at a specified dollar amount. The financial obligation must be identified by the permanent lender in their term sheet and the dollar amount of the financial obligation must be included in the DCR calculation on the permanent lender's 15-year pro forma at Application. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred; or,

(ii) The Applicant demonstrates a history of providing comparable supportive services and expenses at existing affiliated properties within the local area. Except for Supportive Housing Developments, the estimated expense of supportive services must be identified by the permanent lender in their term sheet and included in the DCR calculation on the 15-year pro forma. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred;

(iii) On-site staffing or pro ration of staffing for coordination of services only, not 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 above. If the Applicant's total expense estimate is within 5 percent 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 percent 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 percent 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.

(4) Debt Coverage Ratio. DCR is calculated by dividing NOI by the sum of scheduled loan principal and interest payments for all permanent debt sources of funds. If executed loan documents do not exist, loan terms including principal and/or 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 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 a breakdown of the 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 thirty (30) years and not more than forty (40) years. Up to fifty (50) years may be used for federally sourced or insured loans For permanent lender debt with amortization periods less than thirty (30) years, thirty (30) years will be used. For permanent lender debt with amortization periods greater than forty (40) years, forty (40) years will be used. For non-Housing Tax Credit transactions a lesser amortization period may be used if the Department's funds are fully amortized over the same period as the primary senior debt.

(C) Repayment Period. For purposes of projecting the DCR over a thirty (30) year period for developments with permanent financing structures with balloon payments in less than thirty (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 for all priority or foreclosable lien financing plus the Department's proposed financing 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 an assumed reduction to debt service and the Underwriter will make adjustments to the assumed fi-

nancing structure in the order presented in subclauses (I) - (III) of this clause subject to a Direct Loan NOFA and program rules:

(I) a reduction to the principal amount of a Direct Loan, or in the case where no repayable Developer Fee remains available for deferral and the Direct Loan is necessary to balance the sources and uses, a reduction to the interest rate or an increase in the amortization period for Direct Loans;

(II) a reclassification of Direct Loans to reflect grants,

(III) a 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) If the DCR is greater than the maximum, the recommendations of the Report may be based on an assumed increase to debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause subject to a Direct Loan NOFA and program rules:

(I) reclassification of Department funded grants to reflect loans;

(II) an increase in the interest rate or a decrease in the amortization period for Direct Loans;

(III) an increase in the permanent loan amount for non-Department funded loans 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) The Underwriter may limit total debt service that is senior to a Direct Loan to produce an acceptable DCR on the Direct Loan.

(5) Long Term Pro forma. The Underwriter will create a 30-year operating pro forma using the following:

(A) The Underwriter's or Applicant's first year stabilized pro forma as determined by paragraph (3) of this subsection.

(B) A 2 percent annual growth factor is utilized for income and a 3 percent 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 percent of the Underwriter's estimate. The Department's estimate of the Total Housing Development Cost for Rehabilitation Developments will be based in accordance with the estimated cost provided in the PCA for the scope of work as defined by the Applicant and §10.306(a)(5) of this chapter (relating to PCA Guidelines). 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.

(1) Acquisition Costs. The underwritten acquisition cost is verified with Site Control document(s) for the Property.

(A) Excess Land Acquisition. In cases where more land is to 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). An appraisal containing segregated values for the total acreage, the acreage for the Development Site and the remainder acreage, or tax assessment value may be used by the Underwriter in making a proration determination based on relative value; however, the Underwriter will not utilize a prorated value greater than the total amount in the Site Control document(s).

(B) Identity of Interest Acquisitions.

(i) An acquisition will be considered an identity of interest transaction when the seller is an Affiliate of, a Related Party to, any owner at any level of the Development Team or a Related Party lender; and

(I) is the current owner in whole or in part of the Property; or

(II) has or had within the prior 36 months, legal or beneficial ownership of the property or any portion thereof or interest therein prior to the first day of the Application Acceptance Period.

(ii) In all identity of interest transactions the Applicant is required to provide:

(I) the original acquisition cost evidenced by an executed settlement statement or, if a settlement statement is not available, the original asset value listed in the most current financial statement for the identity of interest owner; and

(II) if the original acquisition cost evidenced by subclause (I) of this clause is less than the acquisition cost stated in the application:

(-a-) an appraisal that meets the requirements of §10.304 of this chapter (relating to Appraisal Rules and Guidelines); and

(-b-) any other verifiable costs of owning, holding, or improving the Property, excluding seller financing, that when added to the value from subclause (I) of this clause justifies the Applicant's proposed acquisition amount.

(-1-) For land-only transactions, documentation of owning, holding or improving costs since the original acquisition date may include property taxes, interest expense to unrelated Third Party lender(s), capitalized costs of any physical improvements, the cost of zoning, platting, and any off-site costs to provide utilities or improve access to the Property. All allowable holding and improvement costs must directly benefit the proposed Development by a reduction to hard or soft costs. Additionally, an annual return of 10 percent may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost is incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered.

(-2-) For transactions which include existing buildings that will be rehabilitated or otherwise retained as part of the Development, documentation of owning, holding,

or improving costs since the original acquisition date may include capitalized costs of improvements to the Property, and in the case of USDA financed Developments the cost of exit taxes not to exceed an amount necessary to allow the sellers to be made whole in the original and subsequent investment in the Property and avoid foreclosure. Additionally, an annual return of 10 percent may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost was incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered. For any period of time during which the existing buildings are occupied or otherwise producing revenue, holding costs may not include capitalized costs, operating expenses, including, but not limited to, property taxes and interest expense.

(iii) In no instance will the acquisition cost utilized by the Underwriter exceed the lesser of the original acquisition cost evidenced by clause (ii)(I) of this subparagraph plus costs identified in clause (ii)(II)(-b-) of this subparagraph, or if applicable the "as-is" value conclusion evidenced by clause (ii)(II)(-a-) of this subparagraph. Acquisition cost is limited to appraised land value for transactions which include existing buildings that will be demolished. The resulting acquisition cost will be referred to as the "Adjusted Acquisition Cost."

(C) Acquisition from Seller without current Title. In cases where as of the first day of the Application Acceptance Period the seller does not hold title to the property, the acquisition price will be limited to the acquisition price between the seller and the current title holder unless the seller can document land improvement costs or work to be performed by the seller as obligated in the site control documents. If the seller is acquiring more land from the current title holder than will be conveyed to the Applicant whether under a single or multiple purchase contract(s), the value ascribed to the proposed Development Site will be determined according to §10.302(e)(1)(A).

(D) Eligible Basis on Acquisition of Buildings. Building acquisition cost will be included in the underwritten Eligible Basis if the Applicant provided an appraisal that meets the Department's Appraisal Rules and Guidelines as described in §10.304 of this chapter. The underwritten eligible building cost will be the lowest of the values determined based on clauses (i) - (iii) of this subparagraph:

(i) the Applicant's stated eligible building acquisition cost;

(ii) the total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), prorated using the relative land and building values indicated by the applicable appraised value;

(iii) total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), less the appraised "as-vacant" land value; or

(iv) the Underwriter will use the value that best corresponds to the circumstances presently affecting the Development that will continue to affect the Development after transfer to the new owner in determining the building value. These circumstances include but are not limited to operating subsidies, rental assistance and/or property tax exemptions. Any value of existing favorable financing will be attributed prorata to the land and buildings.

(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 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. 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 detailed narrative description of the scope of work for the proposed rehabilitation.

(ii) The Underwriter will use cost data provided on the PCA Cost Schedule Supplement.

(5) Contingency. Total contingency, including any soft cost contingency, will be limited to a maximum of 7 percent of Building Cost plus Site Work and off-sites for New Construction and Reconstruction Developments, and 10 percent of Building Cost plus Site Work and off-sites 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 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 percent on Developments with Hard Costs of $3 million or greater, the lesser of $420,000 or 16 percent on Developments with Hard Costs less than $3 million and greater than $2 million, and the lesser of $320,000 or 18 percent on Developments with Hard Costs at $2 million or less. For 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 percent of the project's eligible costs, less Developer fees, for Developments proposing fifty (50) Units or more and 20 percent of the project's eligible costs, less Developer fees, for Developments proposing forty-nine (49) Units or less. For Public Housing Authority Developments for conversion under the HUD Rental Assistance Demonstration ("RAD") program that will be financed using tax-exempt mortgage revenue bonds, the

Developer Fee cannot exceed 20 percent of the project's eligible cost less Developer Fee.

(B) Any additional Developer fee claimed for ineligible costs will be limited to the same percentage but applied only to ineligible Hard Costs (15 percent for Developments with fifty (50) or more Units, or 20 percent for Developments with forty-nine (49) or fewer Units). Any Developer fee above this limit will be excluded from Total Housing Development Costs. All fees to Affiliates and/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) In the case of a transaction requesting acquisition Housing Tax Credits:

(i) the allocation of eligible Developer fee in calculating Rehabilitation/New Construction Housing Tax Credits will not exceed 15 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing fifty (50) Units or more and 20 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing forty-nine (49) Units or less; and

(ii) no Developer fee attributable to an identity of interest acquisition of the Development will be included.

(D) Eligible Developer fee is multiplied by the appropriate Applicable Percentage depending whether it is attributable to acquisition or rehabilitation basis.

(E) For non-Housing Tax Credit developments, the percentage can be up to 15 percent, 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 (1) 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 twenty four (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 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 described in the Applicant's project cost schedule if it is within the range of two (2) to six (6) months of stabilized operating expenses plus debt service. Alternatively, the Underwriter may consider a greater amount proposed by the first lien lender or syndicator if the detail for such greater amount is found by the Underwriter to be both reasonable and well documented. Reserves do not include capitalized asset management fees, guaranty reserves, tenant services reserves or other similar costs. Lease up reserves, exclusive of initial start-up costs, funding of other reserves and interim interest, may be considered with documentation showing sizing assumptions acceptable to the Underwriter. In no instance at initial underwriting will total reserves exceed twelve (12) months of stabilized operating expenses plus debt service (and only for USDA or HUD financed rehabilitation transactions the initial deposits to replacement reserves and transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Pursuant to §10.404(c) 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 and/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 to determine the reasonableness of all soft costs.

(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 tenant population being served) proposed by the Owner in an amount not to exceed 1.5% of the originally underwritten Hard Costs. The additional amenities may 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 $2,500 per Unit into a Special Reserve Account pursuant to §10.404(d) 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 in this chapter;

(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;

(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 referred to the Committee by the Director of Real Estate Analysis. The Committee will review any recommendation made under this subsection to deny an Application for a Grant, Direct Loan and/or Housing Credit Allocation prior to completion of the Report and posting to the Department's website.

(g) Other Underwriting Considerations. The Underwriter will evaluate additional feasibility elements as described in paragraphs (1) - (3) of this subsection.

(1) 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 and for the tenant's contents for 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, NOFA and applicable Federal requirements.

(2) 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.

(3) Supportive Housing. The unique development and operating characteristics of Supportive Housing Developments may require special consideration in these areas:

(A) Operating Income. The extremely-low-income tenant population typically targeted by a Supportive Housing Development may include deep-skewing of rents to well below the 50 percent AMGI level or other maximum rent limits established by the Department. The Underwriter should utilize the Applicant's proposed rents in the Report as long as such rents are at or below the maximum rent limit proposed for the units and equal to any project based rental subsidy rent to be utilized for the Development;

(B) Operating Expenses. A Supportive Housing Development may have significantly higher expenses for payroll, management fee, security, resident support services, or other items than typical affordable housing developments. The Underwriter will rely heavily upon the historical operating expenses of other Supportive Housing Developments affiliated with the Applicant or otherwise available to the Underwriter. Expense estimates must be categorized as outlined in subsection (d)(2) of this section;

(C) DCR and Long Term Feasibility. Supportive Housing Developments may be exempted from the DCR requirements of subsection (d)(4)(D) of this section if the Development is anticipated to operate without conventional or "must-pay" debt. Applicants must provide evidence of sufficient financial resources to offset any projected 15-year cumulative negative Cash Flow. Such evidence will be evaluated by the Underwriter on a case-by-case basis to satisfy the Department's long term feasibility requirements and may take the form of one or a combination of: executed subsidy commitment(s); set-aside of Applicant's financial resources to be substantiated by current financial statements evidencing sufficient resources; and/or proof of annual fundraising success sufficient to fill anticipated operating losses. If either a set aside of financial resources or annual fundraising are used to evidence the long term feasibility of a Supportive Housing Development, a resolution from the Applicant's governing board must be provided confirming their irrevocable commitment to the provision of these funds and activities; and/or

(D) Total Housing Development Costs. For Supportive Housing Developments designed with only Efficiency Units, the Underwriter may use "Average Quality" dormitory costs, or costs of other appropriate design styles from the Marshall & Swift Valuation Service, with adjustments for amenities and/or quality as evidenced in the Application, as a base cost in evaluating the reasonableness of the Applicant's Building Cost estimate for New Construction Developments.

(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. An infeasible Development will not be recommended for a Grant, Direct Loan or Housing Credit Allocation unless the Underwriter can determine an alternative structure and/or conditions the recommendations of the Report upon receipt of documentation supporting an alternative structure. 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) - (5) of this subsection applies unless paragraph (6)(B) of this subsection also applies.

(1) Gross Capture Rate and Individual Unit Capture Rate. The method for determining capture rates for a Development is defined in §10.303of this chapter. The Underwriter will independently verify all components and conclusions of the capture rates and may, at their discretion, use independently acquired demographic data to calculate demand and may make a determination of the capture rates based upon an analysis of the Sub-market. The Development:

(A) is characterized as an Elderly Development and the Gross Capture Rate exceeds 10 percent for the total proposed Units; or

(B) is outside a Rural Area and targets the general population, and the Gross Capture Rate exceeds 10 percent for the total proposed Units; or

(C) is in a Rural Area and targets the general population, and the Gross Capture Rate exceeds 30 percent; or

(D) is Supportive Housing and the Gross Capture Rate exceeds 30 percent; or,

(E) has an Individual Unit Capture Rate for any Unit Type greater than 75 percent.

(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 §10.303 of this chapter on a Unit for Unit basis, and gives the displaced tenants of the previously existing affordable housing a leasing preference.

(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% AMI rents, which is at least 50 percent 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 fifteen (15) years of the long term pro forma as described in subsection (d)(5) of this section.

(3) Pro Forma Rent. The Pro Forma Rent for Units with rents restricted at 60 percent of AMGI is less than the Net Program Rent for Units with rents restricted at or below 50 percent of AMGI unless the Applicant accepts the Underwriter's recommendation, if any, that all restricted units have rents and incomes restricted at or below the 50 percent of AMGI level.

(4) 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 percent for Rural Developments 36 Units or less and 65 percent for all other Developments.

(B) The first year DCR is below 1.15 (1.00 for USDA Developments).

(5) Long Term Feasibility. The Long Term Pro forma at any time during years two through fifteen, as defined in subsection (d)(5) of this section, reflects:

(A) a Debt Coverage Ratio below 1.15; or,

(B) negative cash flow (throughout the term of a Direct Loan).

(6) Exceptions. The infeasibility conclusions may be excepted when:

(A) Waived by the Executive Director of the Department or by the Committee if documentation is submitted by the Applicant to support unique circumstances that would provide mitigation.

(B) Developments not meeting the requirements of one or more of paragraphs (3), (4)(A) or (5) of this subsection will be re-characterized as feasible if one or more of clauses (i) - (v) of this subparagraph apply. A Development financed with a Direct Loan will not be re-characterized as feasible with respect to (5)(B).

(i) The Development will receive Project-based Section 8 Rental Assistance or the HUD Rental Assistance Demonstration Program for at least 50 percent of the Units and a firm commitment, with terms including Contract Rent and number of Units, is submitted at Application.

(ii) The Development will receive rental assistance for at least 50 percent of the Units in association with USDA financing.

(iii) The Development will be characterized as public housing as defined by HUD for at least 50 percent of the Units.

(iv) The Development will be characterized as Supportive Housing for at least 50 percent of the Units and evidence of adequate financial support for the long term viability of the Development is provided.

(v) The Development has other long term project based restrictions on rents for at least 50 percent of the Units that allow rents to increase based upon expenses and the Applicant's proposed rents are at least 10 percent lower than both the Net Program Rent and Market Rent.

§10.303. 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 Property rental rates or sales price and state conclusions as to the impact of the Property 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.

(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) - (3) of this subsection.

(1) The approved Qualified Market Analyst list will be updated and published annually on or about October 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 thirty (30) days prior to the first day of the competitive tax credit Application Acceptance Period or thirty (30) days prior to submission of any other application for funding for which the Market Analyst must be approved.

(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.

(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. 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.

(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 ninety (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.

(3) The list of approved Qualified Market Analysts will be posted on the Department's web site no later than November 1st.

(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 Property 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 Property address or location, description of Property, 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 Property. 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 (3) year history of ownership for the subject Property.

(8) Secondary Market Area. A geographic area from which the Development may draw limited demand in addition to the PMA. A SMA is not required, but may be defined at the discretion of the Market Analyst to support identified demand. All of the Market Analyst's conclusions specific to the subject Development must be based on only one SMA definition. The entire PMA, as described in this paragraph, must be contained within the SMA boundaries. The Market Analyst must adhere to the methodology described in this paragraph when determining the Secondary Market Area. (§2306.67055)

(A) The SMA will be defined by the Market Analyst with:

(i) geographic size based on a base year population of no more than 250,000 people inclusive of the PMA; and

(ii) boundaries based on U.S. census tracts.

(B) The Market Analyst's definition of the SMA must include:

(i) a detailed narrative specific to the SMA explaining;

(I) how the boundaries of the SMA 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 SMA exists but is not definable by census tracts and how this subsection of the SMA supports the rationale for the defined SMA, and also explains how the SMA relates to the PMA in terms of its qualitative and quantitative aspects;

(III) what are the specific attributes of the Development's location within the SMA that would draw prospective tenants currently residing in other areas of the SMA 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 SMA to relocate to the Development;

(V) the household and employment concentrations across the SMA and proximity to the Development;

(VI) that prospective tenants within one mile of the Development will be able to afford the Pro Forma rent or if not provide further comment on where eligible demand will come from; and

(VII) other housing issues in general, if pertinent.

(ii) a complete demographic report for the defined SMA; and

(iii) a scaled distance map indicating the SMA 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.

(9) 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 currently residing in 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) the household and employment concentrations across the PMA and proximity to the Development;

(VI) that prospective tenants within one mile of the Development will be able to afford the Pro Forma rent and if not provide further comment on where eligible demand will come from; and

(VII) other housing issues in general, if pertinent.(ii) a complete demographic report for the defined PMA;

(ii) 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,

(iii) 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; and

(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.

(10) Market Information.

(A) For each of the defined market areas, identify the number of units for each of the categories in clauses (i) - (vi) of this subparagraph; the data must be clearly labeled as relating to either the PMA or the SMA, if applicable:

(i) total housing;

(ii) all multi-family rental developments, including unrestricted developments, whether existing or proposed;

(iii) Affordable housing;

(iv) Comparable Units;

(v) Unstabilized Comparable Units; and

(vi) proposed Comparable Units.

(B) Occupancy. The occupancy rate indicated in the Market Analysis may be used to support both the overall demand conclusion for the proposed Development and the vacancy rate assumption used in underwriting the Development described in §10.302(d)(1)(C) of this chapter (relating to Underwriting Rules and Guidelines). 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.

(i) All demographic reports must include population and household data for a five (5) 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 Developments targeting seniors, all demographic reports must provide a detailed breakdown of households by age and by income; and

(iv) A complete copy of all demographic reports relied upon for the demand analysis, including the reference index that indicates the census tracts on which the report is based.

(E) Demand. Provide a comprehensive evaluation of the need for the proposed housing for the Development as a whole and each Unit type by number of Bedrooms proposed and rent restriction category within the defined market areas using the most current census and demographic data available. A complete demand and capture rate analysis is required in every Market Study, regardless of the current occupancy level of an existing Development.

(i) Demographics. The Market Analyst should use demographic data specific to the characteristics of the households that will be living in the proposed Development. For example, the Market Analyst should use demographic data specific to elderly population for an Elderly Development, if available, and should avoid making adjustments from more general demographic data. If adjustment rates are used based on more general data for any of the criteria described in subclauses (I) - (V) of this clause, they should be clearly identified and documented as to their source in the report.

(I) Population. Provide population and household figures, supported by actual demographics, for a five (5) year period with the year of Application submission as the base year.

(II) Target. If applicable, adjust the household projections for the elderly population targeted 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 1.5 persons per Bedroom (round up).

(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 35 percent for the general population and 50 percent 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 1.5 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 Potential Demand from a Secondary Market Area (SMA) to the extent that SMA demand does not exceed 25 percent of Gross 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 based on 1.5 persons per Bedroom (round up) or one person for Efficiency Units.

(II) For Developments targeting the general population:

(-a-) minimum eligible income is based on a 35 percent rent to income ratio;

(-b-) appropriate household size is defined as 1.5 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 (3) or more Bedrooms:

(-a-) minimum eligible income is based on a 35 percent rent to income ratio;

(-b-) appropriate household size is defined as 1.5 persons per Bedroom (rounded up); and

(-c-) Gross Demand includes both renter and owner households.

(IV) Elderly Developments or Supportive Housing:

(-a-) minimum eligible income is based on a 50 percent rent to income ratio; and

(-b-) Gross Demand includes all household sizes and both renter and owner households.

(iv) Demand from Secondary Market Area:

(I) Potential Demand from an SMA should be calculated in the same way as Potential Demand from the PMA;

(II) Potential Demand from an SMA may be included in Gross Demand to the extent that SMA demand does not exceed 25 percent of Gross Demand; and

(III) the supply of proposed and unstabilized Comparable Units in the SMA must be included in the calculation of the capture rate at the same proportion that Potential Demand from the SMA is included in Gross Demand.

(v) 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.

(11) 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) - (I) 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 §10.302(i) of this chapter. In support of the Market Rent conclusions, provide a separate attribute adjustment matrix for each proposed Unit Type by number of Bedrooms and rental restriction category.

(i) The Department recommends use of HUD Form 92273.

(ii) A minimum of three developments must be represented on each attribute adjustment matrix.

(iii) Adjustments for concessions must be included, if applicable.

(iv) Adjustments for proximity and drive times to employment centers and services narrated in the Comparable Unit description must be included.

(v) Total adjustments in excess of 15 percent must be supported with additional narrative.

(vi) Total adjustments in excess of 25 percent 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) 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 percent of AMGI; two-Bedroom Units restricted at 60 percent of AMGI); and

(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.

(E) Relevant Supply. The Relevant Supply of proposed and unstabilized Comparable Units includes:

(i) the proposed subject Units;

(ii) Comparable Units in an Application with priority over the subject pursuant to §10.201(6) of this chapter.

(iii) Comparable Units in previously approved but Unstabilized Developments in the PMA; and

(iv) Comparable Units in previously approved but Unstabilized Developments in the SMA, in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.

(F) Gross Capture Rate. The Gross Capture Rate is defined as the Relevant Supply divided by the Gross Demand. Refer to §10.302(i) of this chapter for feasibility criteria.

(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, the Underwriter will make assumptions such that each household is included in the capture rate for only one Unit Type.

(H) Absorption. Project an absorption period for the subject Development to achieve Breakeven Occupancy. State the absorption rate.

(I) 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)

(12) Photographs. Provide labeled color photographs of the subject Property, the neighborhood, street scenes, and comparables. An aerial photograph is desirable but not mandatory.

(13) 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.

(14) 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 §10.303(c)(1)(B) and (C) of this chapter.

(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 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.

§10.304. Appraisal Rules and Guidelines.

(a) General Provision. 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 include a statement that the report preparer has read and understood the requirements of this section.

(b) Self-Contained. An appraisal prepared for the Department must describe sufficient and adequate data and analyses to support the final opinion of value. The final value(s) must be reasonable, based on the information included. Any Third Party reports relied upon by the appraiser must be verified by the appraiser as to the validity of the data and the conclusions.

(c) Appraiser Qualifications. The qualifications of each appraiser are determined on a case-by-case basis by the Director of Real Estate Analysis or review appraiser, based upon the quality of the report itself and the experience and educational background of the appraiser. At minimum, a qualified appraiser must be appropriately certified or licensed by the Texas Appraiser Licensing and Certification Board.

(d) Appraisal Contents. An appraisal prepared for the Department must be organized in a format that follows a logical progression. In addition to the contents described in USPAP Standards Rule 2, the appraisal must include items addressed in paragraphs (1) - (12) of this subsection.

(1) Title Page. Include a statement identifying the Department as the client, acknowledging that the Department is granted full authority to rely on the findings of the report, and name and address of person authorizing report.

(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 (3) 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 and/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/or 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.), 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 (3) 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.).

(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 reader 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 (3) 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 or 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 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". For public housing converting to project-based rental assistance, the value must be based on the post conversion restricted rents and 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 and/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") and/or intangible items. If personal property, FF&E, or intangible items are not part of the transaction or value estimate, a statement to such effect should be included.

(11) Marketing Time. Given property characteristics and current market conditions, the appraiser(s) should employ a reasonable marketing period. The report should detail existing market conditions and assumptions considered relevant.

(12) Photographs. Provide good quality color photographs of the subject Property (front, rear, and side elevations, on-site amenities, interior of typical Units if available). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should be included. An aerial photograph is desirable but not mandatory.

(e) Additional Appraisal Concerns. The appraiser(s) must be aware of the Department program rules and guidelines and the appraisal must include analysis of any impact to the subject's value.

§10.305. 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 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 and/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 buildings constructed prior to 1980, a report on the quality of the local water supply does not satisfy this requirement;

(6) assess the potential for the presence of Radon on the Property, and recommend specific testing if necessary;

(7) identify and assess the presence of oil, gas or chemical pipelines, processing facilities, storage facilities or other potentially hazardous explosive activities on-site or in the general area of the site that could potentially adversely impact the Development. Location of these items must be shown on a drawing or map in relation to the Development Site and all existing or future improvements. The drawing must depict any blast zones (in accordance with HUD guidelines) and include HUD blast zone calculations; and

(8) include a vapor encroachment screening in accordance with Vapor Intrusion E2600-10.

(c) If the report recommends further studies or establishes that environmental hazards currently exist on the Property, or are originating off-site, but would nonetheless affect the Property, the Development Owner must act on such a recommendation, or provide a plan for either the abatement or elimination of the hazard. Evidence of action or a plan for the abatement or elimination of the hazard must be presented upon Application submittal.

(d) For Developments in programs that allow a waiver of the Phase I ESA such as a 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.

§10.306. Property Condition Assessment Guidelines.

(a) General Provisions. The objective of the Property Condition Assessment (PCA) for Rehabilitation Developments is to provide cost estimates for repairs and replacements, and new construction of additional buildings or amenities, which are: immediately necessary repairs and replacements; improvements proposed by the Applicant as outlined in a scope of work narrative submitted by the Applicant to the PCA provider that is consistent with the scope of work provided in the Application; and expected to be required throughout the term of the Affordability Period and not less than thirty (30) years. The PCA prepared for the Department should be conducted and reported in conformity with the American Society for Testing and Materials "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018") except as provided for in subsections (b) and (c) of this section. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section. The PCA must include the Department's PCA Cost Schedule Supplement which details all Rehabilitation costs and projected repairs and replacements through at least thirty (30) years. The PCA must also include discussion and analysis of:

(1) Useful Life Estimates. For each system and component of the property the PCA should assess the condition of the system or component, and estimate its remaining useful life, citing the basis or the source from which such estimate is derived;

(2) Code Compliance. The PCA should review and 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 PCA adequately considers any and all applicable federal, state, and local laws and regulations which may govern any work performed to the subject Property. For transactions with Direct Loan funding from the Department, the PCA provider must also evaluate cost estimates to meet the International Existing Building Code and other property standards;

(3) Program Rules. The PCA should 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 for which the Applicant may claim points;

(4) Accessibility Requirements. The PCA report must include an analysis of compliance with the Department's accessibility requirements pursuant to Chapter 1, Subchapter B and Section 10.101 (B)(8) and include the specific scope of work and costs needed to ensure that the Development will meet these requirements upon Rehabilitation (including conversion and Adaptive Reuse).

(5) Reconciliation of Scope of Work and Costs. The PCA report must include the Department's PCA Cost Schedule Supplement with the signature of the PCA provider; the costs presented on the PCA Cost Schedule Supplement are expected to be consistent with both the scope of work and immediate costs identified in the body of the PCA report, and with the Applicant's scope of work and Hard Costs as presented on the Applicant's development cost schedule; any significant variation between the costs listed on the PCA Cost Schedule Supplement and the costs listed in the body of the PCA report or on the Applicant's development cost schedule must be reconciled in a narrative analysis from the PCA provider; and

(6) Cost Estimates for Repair and Replacement. It is the responsibility of the Applicant to ensure that the PCA provider is apprised of all development activities associated with the proposed transaction and consistency of the total immediately necessary and proposed repair and replacement cost estimates with the Total Housing Development Cost schedule and scope of work submitted as an exhibit of the Application.

(A) Immediately Necessary Repairs and Replacement. Systems or components which are expected to have a remaining useful life of less than one (1) 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 should be considered immediately necessary repair and replacement. The PCA 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 repair, replacement, or New Construction above and beyond the immediate repair and replacement described in subparagraph (A) of this paragraph, such items must be identified and the nature or source of obsolescence or improvement to the operations of the Property discussed. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or new construction which is identified as being above and beyond the immediate need, 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 Hard Costs presented on the Applicant's development cost schedule.

(D) Expected Repair and Replacement Over Time. The term during which the PCA should estimate the cost of expected repair and replacement over time must equal the lesser of thirty (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 PCA 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 PCA 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 and no less than thirty (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 percent per annum.

(b) Any costs not identified and discussed in the PCA as part of subsection (a)(4), (5)(A) and (5)(B) of this section will not be included in the underwritten Total Development Cost in the Report.

(c) 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;

(4) USDA guidelines for Capital Needs Assessment.

(d) The Department may consider for acceptance reports prepared according to other standards which are not specifically named in subsection (b) of 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.

(e) The PCA 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. The PCA report should also include a statement that the person or company preparing the PCA report will not materially benefit from the Development in any other way than receiving a fee for performing the PCA. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

§10.307. Direct Loan Requirements.

(a) Direct Loans through the Department must be structured according to the criteria as identified in paragraphs (1) - (5) of this subsection:

(1) the interest rate may be as low as zero percent provided all applicable NOFA and program rules and requirements are met as well as requirements in this Subchapter;

(2) unless structured only as an interim construction or bridge loan and provided all NOFA and program requirements are met, the loan term shall be no less than fifteen (15) years and no greater than forty (40) years and the amortization schedule shall be no less than thirty (30) years and no greater than forty (40) years. The Department's debt will match within six (6) months of the shortest term or amortization of any senior debt so long as neither exceeds forty (40) years.

(3) the loan shall be structured with a regular monthly payment beginning on the first day of the 25th full month following the actual date of loan closing and continuing for the loan term. If the first lien mortgage is a federally insured HUD or FHA mortgage, the Department may approve a loan structure with annual payments payable from surplus cash flow provided that the debt coverage ratio, inclusive of the loan, continues to meet the requirements in this Subchapter. The Board may also approve, on a case-by-case basis, a cash flow loan structure provided it determines that the financial risk is outweighed by the need for the proposed housing;

(4) the loan shall have a deed of trust with a permanent lien position that is superior to any other sources for financing including hard repayment debt that is less than or equal to the Direct Loan amount and for any other sources that have soft repayment structures, non-amortizing balloon notes, have deferred forgivable provisions or in which the lender has an identity of interest with any member of the Development Team. The Board may also approve, on a case-by-case basis, an alternative lien priority provided it determines that the financial risk is outweighed by the need for the proposed housing; and,

(5) If the Direct Loan amounts to more than 50 percent of the Total Housing Development Cost, except for Developments also financed through the USDA §515 program, the Application must include the documents as identified in subparagraphs (A) - (B) of this paragraph:

(A) a letter from a Third Party CPA verifying the capacity of the Applicant, Developer or Development Owner to provide at least 10 percent of the Total Housing Development Cost as a short term loan for the Development; or

(B) evidence of a line of credit or equivalent tool equal to at least 10 percent of the Total Housing Development Cost from a financial institution that is available for use during the proposed Development activities.

(b) Direct Loans through the Department must observe the following construction, occupancy, and repayment provisions in accordance with the Federal requirements in 24 CFR Part 92 and as included in the Direct Loan documents:

(1) Construction must begin no later than six (6) months from the date of "Committing to a specific local project" as defined in 24 CFR Part 92 and must be completed within twenty-four (24) months of the actual date of loan closing as reflected by the development's certificate(s) of occupancy and Certificate of Substantial Completion (AIA Form G704). A final construction inspection request must be sent to the Department within 18 months of the actual loan closing date, with the repayment period beginning on the first day of the 25th month following the actual date of loan closing. Extensions to the construction or development period may only be made for good cause and approved by the Executive Director or authorized designee provided the start of construction is no later than twelve (12) months from the date of committing to a specific local project;

(2) Initial occupancy by eligible tenants shall occur within six (6) months of project completion. Requests to extend the initial occupancy period must be accompanied by marketing information and a marketing plan which will be submitted by the Department to HUD for final approval;

(3) repayment will be required on a per unit basis for units that have not been rented to eligible households within twenty-four (24) months of project completion; and

(4) termination and repayment of the HOME award in full will be required for any development that is not completed within four (4) years of the date of funding commitment.

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, 2016.

TRD-201604740
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 475-2973

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SUBCHAPTER G. FEE SCHEDULE, APPEALS AND OTHER PROVISIONS

10 TAC §§10.901 - 10.904

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter G §§10.901 - 10.904, concerning Fee Schedule, Appeals and Other Provisions. The purpose of the repeal is to allow for the adoption of new Subchapter G to provide for updated guidance relating to fees paid to the Department in order to cover the administrative costs of implementing the program and to provide guidance to applicants and awardees with regard to their responsibilities to the Department as well as a mechanism for formal communication with the Department. Proposed new §§10.901 - 10.904 is published concurrently with this repeal.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to new costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be the replacement of existing Subchapter G with a new Subchapter G that encompasses requirements for all applications applying for multifamily funding through the Department. There is no change in economic cost to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 23, 2016 to October 14, 2016, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Sharon Gamble, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to sharon.gamble@tdhca.state.tx.us, or by fax to (512) 475-0764, attn: Sharon Gamble. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. AUSTIN LOCAL TIME OCTOBER 14, 2016.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Tex. Gov't Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan, and Tex. Gov't Code §2306.144, §2306.147, and §2306.6716.

The proposed repeal affects Tex. Gov't Code Chapter 2306, including Subchapter DD, concerning Low Income Housing Tax Credit Program. The repeal affects no other statutes, articles or codes.

§10.901. Fee Schedule.
§10.902. Appeals Process (§2306.0321; §2306.6715).
§10.903. Adherence to Obligations (§2306.6720).
§10.904. Alternative Dispute Resolution (ADR) Policy.

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, 2016.

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 475-3344

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10 TAC §§10.901 - 10.904

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter G §§10.901 - 10.904, concerning Fee Schedule, Appeals and other Provisions. The purpose of the proposed new sections is to provide for fees paid to the Department in order to cover the administrative costs of implementing the program and to provide guidance to applicants and awardees with regard to their responsibilities to the Department as well as a mechanism for formal communication with the Department. The proposed repeal of existing Subchapter G is published concurrently with this rulemaking.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to new costs or revenues of the state or local governments. While an increase to some fees are proposed, the increased amount would only be applicable should an applicant need to submit multiple requests for the same activity. Moreover, the increase to ownership transfer requests is nominal, and only applicable to applicants seeking such action.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be adequate revenue to cover the cost of monitoring compliance with the program requirements. The 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.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that any new economic impact on small or micro-businesses is expected to be minimal, and/or offset by reductions in other fees and would only be incurred if the business engages in actions that are at its option. The 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.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 23, 2016 to October 14, 2016, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Sharon Gamble, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to sharon.gamble@tdhca.state.tx.us, or by fax to (512) 475-0764, attn: Sharon Gamble. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. AUSTIN LOCAL TIME OCTOBER 14, 2016.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Tex. Gov't Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan, and Tex. Gov't Code §2306.144, §2306.147, and §2306.6716.

The proposed new sections affect Chapter 2306 of the Texas Government Code, including subchapter DD, concerning Low Income Housing Tax Credit Program. The new sections affect no other statutes, articles or codes.

§10.901. Fee Schedule.

Any fees, as stated in this section, not paid 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. The Department may extend the deadline for specific extenuating and extraordinary circumstances, provided the Applicant submits a written request for an extension no later than ten (10) business days prior to the deadline associated with the particular fee. For those requests that do not have a specified deadline, the written request for a fee waiver and description of extenuating and extraordinary circumstances must be included in the original request cover letter.

(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 percent 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 percent of the review, threshold review prior to a deficiency issued will constitute 30 percent of the review, and deficiencies submitted and reviewed constitute 20 percent of the review.

(3) Application Fee. Each Application must be accompanied by an Application fee.

(A) Housing Tax Credit Applications. The fee will be $30 per Unit based on the total number of Units. 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. 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 percent off the calculated Ap-

plication 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 amount of refund will be commensurate with the level of review completed. Initial processing will constitute 20 percent, the site visit will constitute 20 percent, program review will constitute 40 percent, and underwriting review will constitute 20 percent.

(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 (8) and (9) of this section, in the event that a Commitment or Determination Notice is issued by the Department to the Development Owner.

(6) Administrative Deficiency Notice Late Fee. (Not applicable for Competitive Housing Tax Credit Applications.) Applications that fail to resolve Administrative Deficiencies pursuant to §10.201(7) of this chapter may incur a late fee in the amount of $500 for each business day the deficiency remains unresolved.

(7) Third Party Deficiency Request Fee. For Competitive Housing Tax Credits (HTC) Applications, a fee equal to $500 must be submitted with a Third Party Request for Administrative Deficiency that is submitted per Application pursuant to §11.10 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan).

(8) Housing Tax Credit Commitment Fee. No later than the expiration date in the Commitment, a fee equal to 4 percent 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 percent of the Commitment Fee may be issued upon request.

(9) Tax Exempt Bond Development Determination Notice Fee. No later than the expiration date in the Determination Notice, a fee equal to 4 percent 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 within ninety (90) days of the issuance date of the Determination Notice, then a refund of 50 percent of the Determination Notice Fee may be issued upon request.

(10) Building Inspection Fee. (For Housing Tax Credit and Tax-Exempt Bond Developments only.) No later than the expiration date in the Commitment or Determination Notice, a fee of $750 must be submitted. Building inspection fees in excess of $750 may be charged to the Development Owner not to exceed an additional $250 per Development.

(11) Tax-Exempt Bond Credit Increase Request Fee. Requests for increases to the credit amounts to be issued on IRS Forms 8609 for Tax-Exempt Bond Developments must be submitted with a request fee equal to 4 percent of the amount of the credit increase for one (1) year.

(12) Extension Fees. All extension requests for deadlines relating to the Carryover, 10 Percent Test (submission and expenditure), Construction Status Reports, or Cost Certification requirements submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee. Any extension request submitted fewer than thirty (30) days in advance or after the original deadline must be accompanied by an extension fee of $2,500. Extension fees will increase by $500 for each subsequent request on the same activity, 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.

(13) 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. Amendment fees will increase by $500 for each subsequent request, regardless of whether the first request was non-material and did not require a fee. Amendment fees and fee increases are not required for the Direct Loan programs.

(14) 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.

(15) 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.

(16) 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.

(17) Ownership Transfer Fee. Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of $1,000.

(18) Unused Credit or Penalty Fee. 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. For Competitive Housing Tax Credit Developments, a penalty fee equal to the one year credit amount of the lost credits (10 percent 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 one hundred eighty (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 Internal Revenue Code, §42. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Executive Director will 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 or if no Application Round is pending, the Appli-

cation 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 fourteen (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. The penalty will be assessed in an amount that reduces the Applicant's final awarded score by an additional 20 percent.

(19) Compliance Monitoring Fee. Upon receipt of the cost certification for HTC Developments or 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. The amount due will equal $40 per tax credit Unit and $34 per Direct Loan designated Unit, with two fees due for units that are dually designated. For HTC Developments, the fee will be collected, retroactively if applicable, beginning with the first year of the credit period. For Direct Loan only Developments, the fee will be collected beginning with the first year of the repayment period. The invoice must be paid prior to the issuance of IRS Form 8609 for HTC properties. 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.

(20) 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.

(21) Adjustment of Fees by the Department and Notification of Fees. (§2306.6716(b)) All fees charged by the Department in the administration of the tax credit and HOME 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.

§10.902. Appeals Process (§2306.0321; §2306.6715).

(a) An Applicant or Development Owner may appeal decisions made by the Department pursuant to the process identified in this section. 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, 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 change to a Commitment or Determination Notice;

(6) Denial of a change to a loan agreement;

(7) Denial of a change to a LURA;

(8) Any Department decision that results in the erroneous termination 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 seven (7) calendar days 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 signed by the 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 fourteen (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 additional information can be provided in accordance with any rules related to public comment before the Board, the Department expects that a full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal be disclosed in the appeal documentation filed with the Executive Director. Full disclosure allows the Executive Director to make a fully informed decision based on a complete analysis of the circumstances, and verification of any information that may warrant a granting of the appeal in the Applicant's or Development Owner's favor.

(e) An appeal filed with the Board must be received by Department staff not more than seven (7) days after a response from the Executive Director and at least seven (7) days prior to the applicable Board meeting or if the period for an Executive Director response has elapsed the appeal can be heard by the Board if filed at least three (3) days prior to the applicable meeting.

(f) Board review of an Application related appeal will be based on the original Application.

(g) The decision of the Board regarding an appeal is the final decision of the Department.

(h) 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))

§10.903. 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 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; and/or

(2) in the case of the competitive Low Income Housing Tax Credit Program, a point reduction of up to ten (10) points 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.

§10.904. 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 described in Civil Practices and Remedies Code, Chapter 154, ADR procedures include mediation. Except as prohibited by law and the Department's Ex Parte Communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title. Any Applicant may request an informal conference with staff to attempt to resolve any appealable matter, and the Executive Director may toll the running of periods for appeal to accommodate such meetings. In the event a successful resolution cannot be reached, the statements made in the meeting process may not be used by the Department as admissions.

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, 2016.

TRD-201604750
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 475-3344

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CHAPTER 11. HOUSING TAX CREDIT PROGRAM QUALIFIED ALLOCATION PLAN

10 TAC §§11.1 - 11.10

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 11, §§11.1 - 11.10, concerning the 2016 Housing Tax Credit Program Qualified Allocation Plan. The purpose of the repeal is to replace the sections with a new rule that encompasses requirements for all applications applying for housing tax credit funding through the Department. Proposed new §§11.1 - 11.10 is published concurrently with this repeal.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will involve the replacement of sections within the rule with a new rule that encompasses requirements for all applications applying for housing tax credit funding through the Department. There is no change in economic cost to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 23, 2016, to October 14, 2016, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Sharon Gamble, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to sharon.gamble@tdhca.state.tx.us, or by fax to (512) 475-0764, attn: Sharon Gamble. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. AUSTIN LOCAL TIME OCTOBER 14, 2016.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed repeal affects Texas Government Code Chapter 2306, including subchapter DD, concerning the Low Income Housing Tax Credit Program. The repeal affects no other statutes, articles or codes.

§11.1. General.
§11.2. Program Calendar for Competitive Housing Tax Credits.
§11.3. Housing De-Concentration Factors.
§11.4. Tax Credit Request and Award Limits.
§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, 2016.

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 936-7834

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10 TAC §§11.1 - 11.10

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 11, §§11.1 - 11.10,

concerning the 2017 Housing Tax Credit Program Qualified Allocation Plan. The purpose of the proposed new sections is to replace the current Qualified Allocation Plan with a new Qualified Allocation Plan applicable to the 2017 cycle.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to new costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be to provide additional clarity regarding requirements for application submission, define ineligible applicants and applications, and explain processes regarding Board decisions. The 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.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new or additional economic effect on small or micro-businesses. The 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.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 23, 2016, to October 14, 2016, to receive input on the new sections. Note that score values may change, and items may be removed or modified, as a result of public comment. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Sharon Gamble, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to htc.public-comment@tdhca.state.tx.us, or by fax to (512) 475-0764, attn: Sharon Gamble. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. AUSTIN LOCAL TIME OCTOBER 14, 2016.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new sections affect Chapter 2306 of the Texas Government Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The new sections affect no other statutes, articles or codes.

§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 Housing Tax Credits. The federal laws providing for the awarding and allocation of Housing Tax Credits require states to adopt a qualified allocation plan. Pursuant to Texas Government 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 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 Uniform Multifamily Rules), or otherwise incorporated by reference herein collectively constitute the QAP required by Texas Government Code, §2306.67022.

(b) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, 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. Moreover, after the time that an issue is initially presented and guidance is provided, additional information may be identified and/or 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. As provided by Texas Government Code §2306.6715(c), appeal rights are triggered by the publication on the Department's website of the results of the evaluation process. Individual Scoring notices or similar communications are a courtesy only.

(c) Competitive Nature of Program. Applying for competitive housing tax credits is a technical process that must be followed completely. As a result of the highly competitive nature of applying for tax credits, 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 could not have been anticipated and makes timely adherence impossible. If an Applicant chooses to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. 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. Staff, when accepting Applications, may conduct limited reviews at the time of intake as a courtesy only. If staff misses an issue in such a limited review, the fact that the Application was accepted by staff or that the issue was not identified does not operate to waive the requirement or validate the completeness, readability, or any other aspect of the Application.

(d) Definitions. The capitalized terms or phrases used herein are defined in §10.3 of this title (relating to Definitions), unless the context clearly indicates otherwise. Any capitalized terms that are defined in Texas Government Code, Chapter 2306, §42 of the Code, or other Department rules have, when capitalized, the meanings ascribed to them therein. Defined terms when not capitalized, are to be read in context and construed according to common usage.

(e) Census Data. Where this chapter requires the use of census or American Community Survey data, the Department shall use the most current data available as of October 1, 2016, unless specifically otherwise provided in federal or state law or in the rules. The availability of more current data shall generally be disregarded.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted 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 deadlines are based on calendar days.

§11.2. Program Calendar for Competitive Housing Tax Credits.

Non-statutory deadlines specifically listed in the Program Calendar may be extended by the Department for a period of not more than five (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. Except as provided for under 10 TAC §1.1 relating to Reasonable Accommodation Requests, extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party or the documentation involves signatures needed on certifications in the Application.

Figure: 1 TAC §11.2

§11.3. Housing De-Concentration Factors.

(a) Two Mile Same Year Rule (Competitive HTC Only). As required by Texas Government 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 within said county that is awarded in the same calendar year.

(b) Twice the State Average Per Capita. As provided for in Texas Government 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 Round begins (or for Tax-Exempt Bond Developments at the time the Certificate of Reservation is issued by the Texas Bond Review Board), 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 Texas Government 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 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) or Resolutions Delivery Date in §10.4 of this title (relating to Program Dates), as applicable.

(c) One Mile Three Year Rule. (§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) The development serves the same type of household as the proposed Development, regardless of whether the Development serves families, elderly individuals, or another type of household; and

(B) The development has received an allocation of Housing Tax Credits or private activity bonds 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 has not been withdrawn or terminated from the Housing Tax Credit Program.

(2) Paragraph (1) of this subsection does not apply to a 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 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(3) Where a specific source of funding is referenced in paragraph (2)(A) - (D) of this subsection, a commitment or resolution documenting a commitment of the funds must be provided in the Application.

(d) 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 percent Housing Tax Credit Units per total households as established by the 5-year American Community Survey and the Development is in a Place that has a population greater than 100,000 shall be considered ineligible unless the Governing Body of the appropriate municipality or county containing the Development has, by vote, specifically allowed the Development and submits to the Department a resolution stating the proposed Development is consistent with the jurisdiction's obligation to affirmatively further fair housing. The resolution must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(e) Additional Phase. Applications proposing an additional phase of an existing tax credit Development serving the same Target Population, or Applications proposing Developments that are adjacent to an existing tax credit Development serving the same Target Population, or Applications that are proposing a Development serving the same Target Population on a contiguous site to another Application awarded in the same program year, shall be considered ineligible unless the other Developments or phase(s) of the Development have been completed and have maintained occupancy of at least 90 percent for a minimum six (6) month period as reflected in the submitted rent roll. If the Application proposes the Rehabilitation or replacement of existing federally-assisted affordable housing units or federally-assisted affordable housing units demolished on the same site within two years of the beginning of the Application Acceptance Period, this provision does not apply.

§11.4. Tax Credit Request and Award Limits.

(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. If the Department determines that an allocation recommendation would cause a violation of the $3 million credit limit per Applicant, the Department will select the Development(s) that most effectively satisfies the Department's goals in fulfilling set-aside priorities and are highest scoring in the regional allocation. 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 Development Consultant or Developer that do not exceed 10 percent of the Developer Fee (or 20 percent for Qualified Nonprofit Developments and other Developments in which an entity that is exempt from federal income taxes owns at least 50% of the General Partner) to be paid or $150,000, whichever is greater.

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the sub-region based on estimates released by the Department on December 1, or $1,500,000, whichever is less, or $2,000,000 for Applications under the At-Risk Set-Aside. 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 release of the Internal Revenue Service notice regarding the 2017 credit ceiling. 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 automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded. 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 percent Boost). Applications will be evaluated for an increase of up to but not to exceed 30 percent in Eligible Basis provided they meet the criteria identified in paragraphs (1) - (3) of this subsection, or if required under §42 of the Code. 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 evaluated by the Real Estate Analysis division, in which case a credit amount necessary to fill the gap in financing will be recommended. 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 percent Housing Tax Credit Units per total households in the tract as established by the U.S. Census Bureau for the 5-year American Community Survey. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20 percent Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. For New Construction or Adaptive Reuse Developments located in a QCT with 20 percent or greater Housing Tax Credit Units per total households, the Development is eligible for the boost if the Application includes a resolution stating that the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and referencing this rule. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable. Applicants must submit a copy of the 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 ("FMRs") as determined by the Secretary of HUD) that has high construction, land and utility costs relative to the AMGI. For Tax-Exempt Bond Developments, as a general rule, an 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 percent boost in its underwriting evaluation. Applicants must submit a copy of the SADDA map that clearly shows the proposed Development is located within the boundaries of a SADDA.

(3) The Development meets one of the criteria described in subparagraphs (A) - (E) of this paragraph pursuant to §42(d)(5) of the Code:

(A) the Development is located in a Rural Area;

(B) the Development is proposing entirely Supportive Housing and is expected to be debt free or have no foreclosable or non-cash flow debt;

(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 an additional 10 percent of the proposed low income Units for households at or below 30 percent of AMGI. These Units must be in addition to Units required under any other provision of this chapter, or required under any other funding source from the Multifamily Direct Loan program; or

(E) the Development is not an Elderly Development and is not located in a QCT that is in an area covered by a concerted revitalization plan. 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.

§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(3) of this chapter (related to Pre-Application Participation).

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)) At least 10 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of §42(h)(5) of the Code and Texas Government Code, §2306.6729 and §2306.6706(b). Qualified Nonprofit Organizations must have the controlling interest in the Development Owner applying for this set-aside (e.g., greater than 50 percent ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be 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 and/or 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)) At least 5 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. If an Application in this set-aside involves Rehabilitation it will be attributed to and come from the At-Risk Development Set-Aside; if an Application in this set-aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region and will compete within the applicable sub-region unless the Application is receiving USDA Section 514 funding. Commitments of Competitive Housing Tax Credits issued by the Board in the current program year will be applied to each set-aside, Rural Regional Allocation, Urban Regional Allocation and/or USDA Set-Aside for the current Application Round as appropriate. Applications must also meet all requirements of Texas Government Code, §2306.111(d-2).

(3) At-Risk Set-Aside. (§2306.6714; §2306.6702)

(A) At least 15 percent 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). 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) Up to 5 percent of the State Housing Credit Ceiling associated with this set-aside may be given priority to Rehabilitation Developments under the USDA Set-Aside.

(B) An At-Risk Development must meet all the requirements of Texas Government Code, §2306.6702(a)(5). For purposes of this subparagraph, any stipulation to maintain affordability in the contract granting the subsidy, or any HUD-insured or HUD-held mortgage will be considered to be nearing expiration or nearing the end of its term if expiration will occur or the term will end within two (2) 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) may be eligible if the HUD-insured or HUD-held mortgage is eligible for prepayment without penalty. To the extent that an Application is eligible under §2306.6705(a)(5)(B)(ii)(b) and the units being reconstructed were demolished prior to the beginning of the Application Acceptance Period, the Application will be categorized as New Construction.

(C) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Texas Government Code, §2306.6702(a)(5) will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site. Alternatively, 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 to the Development Site (i.e. the site proposed in the tax credit Application) prior to the tax credit Carryover deadline;

(ii) the Applicant seeking tax credits must propose the same number of restricted units (e.g. the Applicant may add market rate units); and

(iii) the new Development Site must qualify for points on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria).

(D) If Developments at risk of losing affordability from the financial benefits available to the Development are able to retain or renew the existing financial benefits and affordability they must do so unless regulatory barriers necessitate elimination of a portion of that benefit for the Development.

(i) Evidence of the legal requirements that will unambiguously cause the loss of affordability must be included with the application.

(ii) For Developments qualifying under §2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, but no less than 25 percent of the proposed Units must be public housing units supported by public housing operating subsidy. (§2306.6714(a-1)). If less than 100 percent of the public housing benefits are transferred, 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.

(E) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a Qualified Contract under §42 of the Code. Evidence must be provided in the form of a copy of the recorded LURA, the first years' 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.

(F) 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 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 ("sub-region") Housing Tax Credits in an amount consistent with the Regional Allocation Formula developed in compliance with Texas Government Code, §2306.1115. The process of awarding the funds made available within each sub-region 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 regional allocation together with other policies and purposes set out in Texas Government Code, Chapter 2306 and the Department shall provide Applicants 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 priority of Applications within a particular sub-region 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 by selecting the Development(s) that most effectively satisfy the Department's goals in meeting set-aside and regional allocation goals. Where sufficient credit becomes available to award an application on the waiting list late in the calendar year, staff may allow flexibility in meeting the Carryover Allocation submission deadline to ensure to the fullest extent feasible that available resources are allocated by December 31.

(2) Credits Returned and National Pool Allocated After January 1. For any credits returned after January 1 and eligible for reallocation, the Department shall first return the credits to the sub-region 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 sub-region and be awarded in the collapse process to an Application in another region, sub-region 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 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 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 will be prioritized for assignment, with highest priority given to those identified as most competitive 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 level of priority review 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 At-Risk Set-Aside requirement;

(B) At-Risk Set-Aside Application Selection (Step 2). The second level of priority review 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 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 sub-regions to award under the remaining steps, but these funds would generally come from the statewide collapse;

(C) Initial Application Selection in Each Sub-Region (Step 3). The highest scoring Applications within each of the 26 sub-regions will then be selected provided there are sufficient funds within the sub-region to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the sub-regions. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Texas Government Code, §2306.6711(h) and will publish such percentages on its website.

(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.

(ii) in Uniform State Service Regions containing a county with a population that exceeds 1.7 million, the Department 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), is located in an urban subregion, and is within the boundaries of a municipality with a population that exceeds 500,000.

(D) Rural Collapse (Step 4). If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region ("Rural sub-region") 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 sub-region as compared to the sub-region'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 percent 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 sub-region 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 sub-region:

(i) the sub-region with no recommended At-Risk Applications from the same Application Round; and

(ii) the sub-region 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 sub-region in the State, will be combined into one "pool." The funds will be used to award the highest scoring Application (not selected in a prior step) in the most underserved sub-region in the State compared to the amount originally made available in each sub-region. 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 Ur-

ban subregion, calculate the maximum percentage in accordance with Texas Government 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 in the next most underserved sub-region. In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved sub-region:

(i) the sub-region with no recommended At-Risk Applications from the same Application Round; and

(ii) the sub-region 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 percent 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 sub-region 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 Application to award. For example, if credits are returned, those credits will first be made available in the set-aside or sub-region from which they were originally awarded. This means that 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 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. (§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 shall not be subject to the requirements of paragraph (2) of this section. Requests to separately allocate returned credit 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 Department's Governing 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 after the start of construction and 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; 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;

(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;

(G) The Department's Real Estate Analysis Division determines that the Development continues to be financially viable in accordance with the Department's underwriting rules after taking into account any insurance proceeds related to the event; and

(H) The Development Owner submits a signed written request for a new Carryover Agreement concurrently with the voluntary return of the HTCs.

§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. The tie breaker factors are not intended to specifically address a tie between equally underserved sub-regions in the rural or statewide collapse.

(1) Applications having achieved a score on Proximity to the Urban Core

(2) Applications scoring higher on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.

(3) Applications having achieved the maximum Opportunity Index Score and the highest number of point items on the Opportunity Index menu that they were unable to claim because of the 7 point cap on that item.

(4) Applications having achieved the maximum Educational Quality score and the highest number of point items on the Educational Quality menu that they were unable to claim because of the 5 point cap on that item.

(5) The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site.

(6) Applications proposed to be located in a census tract with the lowest poverty rate as compared to another Application with the same score.

(7) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. 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. The linear measurement will be performed from closest boundary to closest boundary.

§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 thirteen (13) state service regions, sub-regions and set-asides. Based on an understanding of the potential competition they can make a more informed decision 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, with all required information and exhibits provided pursuant to the Multifamily Programs Procedures Manual.

(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 §10.901 of this title (relating to Fee Schedule), not later than the Pre-application Final Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits). 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.

(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 an Application, pre-applications are subject to the same limitations, restrictions, or causes for disqualification or termination as a full Application, 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.

(b) Pre-Application Threshold Criteria. Pursuant to Texas Government Code, §2306.6704(c) pre-applications will be terminated unless they meet the threshold criteria described in subsection (a) of this section and paragraphs (1) and (2) of this subsection:

(1) Submission of the competitive HTC pre-application in the form prescribed by the Department which identifies at a minimum:

(A) Site Control meeting the requirements of §10.204(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, and/or Rural);

(E) Total Number of Units proposed;

(F) Census tract number in which the Development Site is located;

(G) Expected score for each of the scoring items identified in the pre-application materials;

(H) Proposed name of ownership entity; and

(I) Disclosure of any Undesirable Neighborhood Characteristics under §10.101(a)(4).

(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 whose boundaries include the proposed Development Site as of the beginning of the Application Acceptance Period.

(B) Notification Recipients. No later than the date the pre-application is submitted, notification must be sent to all of the persons or entities prescribed in clauses (i) - (viii) of this subparagraph. Developments located in an 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 registered return receipt or similar tracking mechanism in the format required in the Pre-application Notification Template provided in the pre-application. The Applicant is encouraged to retain proof of delivery in the event the Department requires 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. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

(i) Neighborhood Organizations on record with the state or county as of the beginning of the Application Acceptance Period whose boundaries include the 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) - (VI) 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.); and

(VI) the approximate total number of Units and approximate total number of low-income Units.

(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 Target Population exclusively 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.

(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, 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.

§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 Texas Government Code, Chapter 2306, §42 of the Code, and other criteria established in a manner consistent with Chapter 2306 and §42 of the Code. 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. Due to the highly competitive nature of the program, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency. However, Department staff may provide the Applicant an opportunity to explain how they believe the Application, as submitted, meets the requirements for points or otherwise satisfies the requirements. When providing a pre-application, Application or other materials to a state representative, local governmental body, Neighborhood Organization, or anyone else to secure support or approval that may affect the Applicant's competitive posture, an Applicant must disclose that in accordance with the Department's rules aspects of the Development may not yet have been determined or selected or may be subject to change, such as changes in the amenities ultimately selected and provided.

(b) Criteria promoting development of high quality housing.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)) An Application may qualify for up to fifteen (15) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (8 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.

(i) five-hundred fifty (550) square feet for an Efficiency Unit;

(ii) six-hundred fifty (650) square feet for a one Bedroom Unit;

(iii) eight-hundred fifty (850) square feet for a two Bedroom Unit;

(iv) one-thousand fifty (1,050) square feet for a three Bedroom Unit; and

(v) one-thousand two-hundred fifty (1,250) square feet for a four Bedroom Unit.

(B) Unit and Development Features (7 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 §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) An Application may qualify to receive one (1) point if the ownership structure contains a HUB certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date, or Qualified Nonprofit Organization provided the Application is under the Nonprofit Set-Aside.

(A) The HUB or 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 80 percent and no less than 5 percent for any category. For example, a HUB or Qualified Nonprofit Organization may have 20 percent ownership interest, 30 percent of the developer fee, and 30 percent of cash flow from operations.

(B) The HUB or Qualified Nonprofit Organization must also 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. A Principal of the HUB or Qualified Nonprofit Organization cannot be a Related Party to any other Principal of the Applicant or Developer (excluding another Principal of said HUB or Qualified Nonprofit Organization).

(c) Criteria to serve and support Texans most in need.

(1) Income Levels of Tenants. (§§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) or (B) of this paragraph.

(A) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs:

(i) At least 40 percent of all low-income Units at 50 percent or less of AMGI (16 points);

(ii) At least 30 percent of all low income Units at 50 percent or less of AMGI (14 points); or

(iii) At least 20 percent of all low-income Units at 50 percent or less of AMGI (12 points).

(B) For Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph:

(i) At least 20 percent of all low-income Units at 50 percent or less of AMGI (16 points);

(ii) At least 15 percent of all low-income Units at 50 percent or less of AMGI (14 points); or

(iii) At least 10 percent of all low-income Units at 50 percent or less of AMGI (12 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. These levels are in addition to those committed under paragraph (1) of this subsection.

(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI for Supportive Housing Developments proposed by a Qualified Nonprofit (13 points);

(B) At least 10 percent of all low-income Units at 30 percent or less of AMGI or, for a Development located in a Rural Area, 7.5 percent of all low-income Units at 30 percent or less of AMGI (11 points); or

(C) At least 5 percent of all low-income Units at 30 percent or less of AMGI (7 points).

(3) Tenant Services. (§2306.6710(b)(1)(G) and §2306.6725(a)(1)) A Supportive Housing Development proposed by a Qualified Nonprofit may qualify to receive up to eleven (11) points and all other Developments may receive up to ten (10) points.

(A) By electing points, the Applicant certifies that the Development will provide a combination of supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants and that there is adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application will remain the same. No fees may be charged to the tenants for any of the services. 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. (10 points for Supportive Housing, 9 points for all other Development)

(B) The Applicant certifies that the Development will contact local service providers, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. (1 point)

(4) Opportunity Index. The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials.

(A) A Proposed Development is eligible for a maximum of seven (7) opportunity index points if it is located in a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) below.

(i) The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and an income rate in the two highest quartiles within the uniform service region. (2 points)

(ii) The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile, without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. and, (1 point)

(B) An application that meets the foregoing criteria may qualify for additional points up to seven (7) points for any one or more of the following factors. Each facility or amenity may be used only once for scoring purposes, regardless of the number of categories it fits:

(i) For Developments located in an Urban Area, an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIV) of this subparagraph.

(I) The Development site is located less than 1/2 mile on an accessible route from a public park with an accessible playground (1 point)

(II) The Development Site is located less than ½ mile on an accessible route from Public Transportation with a route schedule that provides regular service to employment and basic services (1 point)

(III) The Development site is located within 1 mile of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point)

(IV) The Development is located within 3 miles of either an emergency room or an urgent care facility (1 point)

(V) The Development Site is within 2 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten (1 point)

(VI) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less (1 point)

(VII) The development site is located within 1 mile of a public library (1 point)

(VIII) The Development Site is located within 5 miles of a University or Community College campus (1 point)

(IX) The Development Site is located within 3 miles of a concentrated retail shopping center of at least 1 million square feet or that includes at least 4 big-box national retail stores (1 point)

(X) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher. (1 point)

(XI) Development site is within 2 miles of a government-sponsored museum (1 point)

(XII) Development site is within 1 mile of an indoor recreation facility available to the public (1 point)

(XIII) Development site is within 1 mile of an outdoor recreation facility available to the public (1 point)

(XIV) Development site is within 1 mile of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point)

(ii) For Developments located in a Rural Area, an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIII) of this subparagraph.

(I) The Development site is located within 2 miles of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point)

(II) The Development is located within 4 miles of health -related facility, such a full service hospital, community health center, or minor emergency center. Physician specialty offices are not considered in this category. (1 point)

(III) The Development Site is within 3 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten (1 point)

(IV) The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less (1 point)

(V) The development site is located within 3 miles of a public library (1 point)

(VI) The development site is located within 3 miles of a public park (1 point)

(VII) The Development Site is located within 7 miles of a University or Community College campus (1 point)

(VIII) The Development Site is located within 5 miles of a retail shopping center with XX square feet of stores (1 point)

(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher. (1 point)

(X) Development site is within 2 miles of a government-sponsored museum (1 point)

(XI) Development site is within 1 mile of an indoor recreation facility available to the public (1 point)

(XII) Development site is within 1 mile of an outdoor recreation facility available to the public (1 point)

(XIII) Development site is within 1 mile of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point)

(5) Educational Quality. In order to qualify for points under Educational Quality, the elementary school and the middle school or high school within the attendance zone of the Development must have a TEA rating of Met Standard. For districts without attendance zones, the schools closest to the site which may possibly be attended by the tenants must be used for scoring. Choice districts with attendance zones will use the school zoned to the Development site. Schools with an application process for admittance, limited enrollment or other requirements that may prevent a tenant from attending will not be considered as the closest school or the school which attendance zone contains the site. The applicable ratings will be the 2016 accountability rating determined by the Texas Education Agency for the State, Education Service Center region, or individual campus. 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. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating.

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score (5 points);

(B) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score at or above

the lower of the score for the Education Service Center region, or the statewide score. (3 points, or 2 points for a Supportive Housing Development); or

(C) The Development Site is within the attendance zone of a middle school or a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. Center.(1 point); or

(D) The Development Site is within the attendance zone of an elementary school with an Index 1 score in the first quartile of all elementary schools statewide.(1 point); or

(E) If the Development Site is able to score one or three points under clauses (B) - (D) above, two additional points or 1 point for a Supportive Housing Development may be added if one or more of the features described in clause (i) - (iv) is present:

(i) The Development Site is in the attendance zone of an elementary school that has Met Standard, and has earned at least one distinction designation by TEA(1 point);

(ii) The Development Site is located in the attendance zone of a general admission high school with a four-year longitudinal graduation rate in excess of the statewide four-year longitudinal graduation rate for all schools for the latest year available. (1 point)

(iii) The development is in the primary attendance zones for an elementary school that has met standard and offers an extended day Pre-K program. (1 point)

(iv) The development site within the attendance zone of an elementary school, a middle school and a high school that all have a Met Standard rating for the three years prior to application. (1 point)

(6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive up to five (5) points if the Development Site is located in one of the areas described in subparagraphs (A) - (E) of this paragraph, and the Application contains evidence substantiating qualification for the points. If an Application qualifies for points under paragraph (4) of this subsection then the Application is not eligible for points under subparagraphs (A) and (B) of this paragraph.

(A) The Development Site is located wholly or partially within the boundaries of a colonia as such boundaries are determined by the Office of the Attorney General and within 150 miles of the Rio Grande River border. For purposes of this scoring item, the colonia must lack water, wastewater, or electricity provided to all residents of the colonia at a level commensurate with the quality and quantity expected of a municipality and the proposed Development must make available any such missing water, wastewater, and electricity supply infrastructure physically within the borders of the colonia in a manner that would enable the current dwellings within the colonia to connect to such infrastructure (2 points);

(B) An Economically Distressed Area (1 point);

(C) A census tract within the boundaries of an incorporated area that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development within the past 15 years (3 points);

(D) For areas not scoring points for (C) above, a census tract that does not have a Development subject to an active tax credit LURA (2 points);

(E) A census tract within the boundaries of an incorporated area and all contiguous census tracts for which neither the census tract in which the Development is located nor the contiguous census tracts have received an award or HTC allocation within the past 15 years and continues to appear on the Department's inventory. This item will apply to cities with a population of 500,000 or more, and will not apply in the At-Risk Set-Aside (5 points).

(7) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive up to two (2) points by serving Tenants with Special Housing Needs. In order to qualify for points, Applicants must agree to set-aside at least 5 percent of the total Units for Persons with Special Needs. The units identified for this scoring item may not be the same units identified for Section 811 Project Rental Assistance Demonstration program. For purposes of this subparagraph, Persons with Special Needs is defined as households where one individual has alcohol and/or drug addictions, Colonia resident, Persons with Disabilities, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), persons with HIV/AIDS, homeless populations, veterans, wounded warriors (as defined by the Caring for Wounded Warriors Act of 2008), and farmworkers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special 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 Needs, but will be required to continue to affirmatively market Units to Persons with Special Needs.

(8) Proximity to the Urban Core. A development in a County with a population over 1 million and in a City with a population over 500,000 if the Development Site is located within 4 miles of the main City Hall facility. The main City Hall facility will be determined by the location of regularly scheduled City Council, City Commission, or similar governing body meetings. Distances are measured from the nearest property boundaries, not inclusive of non-contiguous parking areas (5 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 of this chapter. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution a municipality or county should consult its own staff and legal counsel as to whether such resolution will be 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, 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. 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:

(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; or

(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; and

(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; or

(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:

(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)) An Application may receive one (1) point for a commitment of Development funding from the city (if located in a city) or county in which the Development Site is located. 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 for the benefit of the Development. The letter must include the amount of support and the terms under which it will be provided. Once a letter is submitted to the Department it may not be changed or withdrawn.

(3) Declared Disaster Area. (§2306.6710(b)(1)(H)) 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 Texas Government Code, §418.014.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(J); §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 existence prior to the Pre-Application Final Delivery Date and its boundaries must contain the entire Development Site. In addition, the Neighborhood Organization must be on record with the Secretary of State or county in which the Development Site is located. 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.

(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 Development Site and that the Neighborhood Organization meets the definition pursuant to Texas Government 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 Texas Government 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 percent 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 is encouraged to be prepared to provide additional information with regard to opposition.

(B) Technical Assistance. For purposes of this section, 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 and/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; and

(iii) presentation of information and response to questions at duly held meetings where such matter is considered.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in 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 sup-

port 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; or

(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, 2017. The Neighborhood Organization expressing opposition will be given seven (7) 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.

(5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2)) Applications may receive up to eight (8) points or have deducted up to eight (8) points for this scoring item. To qualify under this paragraph letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development and clearly state support for or opposition to the specific Development. 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 of this chapter. Once a letter is submitted to the Department it may not be changed or withdrawn except in the instance where a representative who has provided a letter provides an additional letter to the Department, on or before April 3, 2017, stating that in their estimation the factual representations made to them to secure their original letter have proven to have been inaccurate, misleading, or otherwise insufficient to form a basis for their support, neutrality or opposition and, accordingly, their letter is withdrawn. A change in this manner is final and will result in a score of zero (0) points. 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. A letter expressly stating opposition is scored - 8 points. A letter expressly stating neutrality is scored 0 points. Any other letter conveying a sense of support is scored 8 points. If a tone of support cannot be discerned in a letter that does not expressly state support, neutrality or opposition, the representative will be contacted and given five (5) business days to indicate in writing if they wish to have the letter scored as support or neutral. If clarification is not timely provided, the letter will be scored as neutral.

(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, 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), and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters 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.

(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 community or civic organization must provide evidence of its tax exempt status and its existence and participation in the community in which the Development Site is located including, but not limited to, a listing of services and/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), 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 whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to 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. An Application may qualify for 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, and in a city with a population of 100,000 or more.

(i) an Application may qualify to receive up to six (6) points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed and executed. The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems. The concerted revitalization plan that meets the criteria described in subclauses (I) - (IV) of this clause:

(I) The concerted revitalization plan must have been adopted by the municipality or county in which the Development Site is located. The resolution adopting the plan or other acceptable evidence that the plan has been duly adopted must be submitted with the application.

(II) The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. These problems must include the limited availability of safe, decent, affordable housing and may include the following:

(-a-) long-term disinvestment, such as significant presence of residential and/or commercial blight, streets infrastructure neglect such as inadequate drainage, and/or sidewalks in significant disrepair;

(-b-) declining quality of life for area residents, such as high levels of violent crime, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances or overt illegal activities;

(III) Staff will review the target area for presence of the problems identified in the plan and for targeted efforts within the plan to address those problems. In addition, but not in lieu of, such a plan may be augmented with targeted efforts to promote a more vital local economy and a more desirable neighborhood, including but not limited to:

(-a-) creation of needed affordable housing by improvement of existing affordable housing that is in need of replacement or major renovation;

(-b-) attracting private sector development of housing and/or business;

(-c-) developing health care facilities;

(-d-) providing public transportation;

(-e-) developing significant recreational facilities; and/or

(-f-) improving under-performing schools.

(IV) The adopted plan must have sufficient, documented and committed funding to accomplish its purposes on its established timetable. This funding must have been flowing in accordance with the plan, such that the problems identified within the plan will have been sufficiently mitigated and addressed prior to the Development being placed into service.

(ii) up to seven (7) points will be awarded based on:

(I) Applications will receive four (4) points for a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area based on the target efforts outlined in the plan; and

(II) Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified in a resolution by the city or county as contributing more than any other to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. The resolution from the Governing Body of the city or county that approved the plan is required to be submitted in the Application. If multiple Applications submit resolutions under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points.

(III) Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)

(B) For Developments located in a Rural Area.

(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction in an location meeting the threshold requirements of the Opportunity Index, §11.9(c)(4)(A) of a development in a rural area that is currently leased at 90% or greater by low income households and which was initially constructed prior to 1980 as either public housing or as affordable housing with support from USDA, the HOME program, or the CDBG program. 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 Undesirable Neighborhood Characteristics.

(ii) Applications will receive 3 points for the rehabilitation of a development in a rural area that is currently leased at 90% or greater by low income households and which was initially constructed prior to 1980 as either public housing or as affordable housing with support from USDA, the HOME program, or the CDBG program if the proposed location requires no disclosure of Undesirable Neighborhood Features under Section §10.101(a)(4) or required such disclosure but the disclosed items were found acceptable.

(iii) Applications may receive (2) points in addition to those under subclause (i) or (ii) of this clause if the Development is explicitly identified in a letter by the city or county as contributing more than any other Development to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. The letter from the Governing Body of the city or county that approved the plan is required to be submitted in the Application. If multiple Applications submit valid letters under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application as contributing more than any other Development to concerted revitalization efforts.

(iv) Applications may receive (1) additional point if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4).

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) An Application may qualify to receive a maximum of eighteen (18) points for this item. To qualify for points, a 15-year pro forma itemizing all projected income including Unit rental rate assumptions, operating expenses and debt service, and specifying the underlying growth assumptions and reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted. The pro forma must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed Third Party construction or 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. If the letter evidences review of the

Development alone it will receive sixteen (16) points. If the letter evidences review of the Development and the Principals, it will receive eighteen (18) points.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) An Application may qualify to receive up to twelve (12) points based on either the Building Cost or the Hard Costs per square foot of the proposed Development voluntarily included in eligible basis ("Eligible Hard Cost"), as originally submitted in the Application. For purposes of this paragraph, Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Eligible Hard Cost will include general contractor overhead, profit, and general requirements. Structured parking or commercial space costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial construction, as applicable. 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 50 square feet per Unit.

(A) A high cost development is a Development that meets one of the following conditions:

(i) the Development is elevator served, meaning it is either a Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors;

(ii) the Development is more than 75 percent single family design;

(iii) the Development is Supportive Housing; or

(iv) the Development Site qualifies for a minimum of five (5) points under subsection (c)(4) of this section, related to Opportunity Index, and is located in an Urban Area.

(B) Applications proposing New Construction or Reconstruction will be eligible for twelve (12) points if one of the following conditions is met:

(i) the Building Cost per square foot is less than $72.80 per square foot;

(ii) the Building Cost per square foot is less than $78 per square foot, and the Development meets the definition of a high cost development;

(iii) the Eligible Hard Cost per square foot is less than $93.60 per square foot; or

(iv) the Eligible Hard Cost per square foot is less than $104 per square foot, and the Development meets the definition of high cost development.

(C) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

(i) the Building Cost per square foot is less than $78 per square foot;

(ii) the Building Cost per square foot is less than $83.20 per square foot, and the Development meets the definition of a high cost development;

(iii) the Eligible Hard Cost per square foot is less than $98.80 per square foot; or

(iv) the Eligible Hard Cost per square foot is less than $109.20 per square foot, and the Development meets the definition of high cost development.

(D) Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:

(i) the Building Cost is less than $93.60 per square foot; or

(ii) the Eligible Hard Cost is less than $114.40 per square foot.

(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) twelve (12) points for Applications which include Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than $104 per square foot;

(ii) twelve (12) points for Applications which include Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than $135.20 per square foot, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) eleven (11) points for Applications which include Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than $135.20 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 during the Pre-Application Acceptance Period. Applications that meet 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 ten (10) percent 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, and/or Rural);

(E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than six (6) points from what was reflected in the pre-application self score;

(F) The Development Site at Pre-Application and full Application are the same or have contiguous borders of at least 10% with the site at full application, and the site at both pre-application and at full application are entirely within the same census tract. The site at full Application may not require notification to any person or entity not required to have been notified at pre-application;

(G) The Development Site does not have Undesirable Neighborhood Characteristics as described in 10 TAC §10.101(a)(4) that were not disclosed with the pre-application; and

(H) The pre-application met all applicable requirements.

(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A) An Application may qualify to receive up to three (3) points if at least five (5) percent of the total Units are restricted to

serve households at or below 30 percent 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 percent 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 seven (7) percent of the Total Housing Development Cost (3 points); or

(iii) if the Housing Tax Credit funding request is less than eight (8) percent of the Total Housing Development Cost (2 points); or

(iv) if the Housing Tax Credit funding request is less than nine (9) percent 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 percent 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); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) In accordance with the Code, each Development is required to maintain its affordability for a 15-year Compliance Period and, subject to certain exceptions, an additional 15-year Extended Use Period. Development Owners that agree to extend the Affordability Period for a Development to thirty-five (35) years total may receive two (2) points.

(6) Historic Preservation. (§2306.6725(a)(5)) At least seventy-five percent of the residential units shall reside within the Certified Historic Structure and the Development must reasonably be expected to qualify to receive and document receipt of historic tax credits by 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. (5 points)

(7) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) 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 Texas Government 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).

(8) Funding Request Amount. An Application may qualify to receive one (1) point if the Application reflects a Funding Request of Housing Tax Credits, as identified in the original Application submission, of no more than 100% of the amount available within the sub-region or set-aside as determined by the application of the regional allocation formula on or before December 1, 2016.

(f) Point Adjustments. Staff will recommend to the Board and the Board may make a deduction of up to five (5) points for any of the items listed in paragraph (1) of this subsection, unless the person approving the extension (the Board or Executive Director, as applicable) makes an affirmative finding setting forth that the facts which gave rise to the need for the extension were 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 fourteen (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. (§2306.6710(b)(2))

(1) If the Applicant or Affiliate failed to meet the original Carryover submission or 10 percent Test deadline(s) or has requested an extension of the Carryover submission deadline, the 10 percent Test deadline (relating to either submission or expenditure).

(2) If the Applicant or Affiliate failed to meet the commitment or expenditure requirements of a HOME or National Housing Trust Fund award from the Department.

(3) If the Developer or Principal of the Applicant violates the Adherence to Obligations.

(4) Any deductions assessed by the Board for paragraph (1) or (2) of this subsection based on a Housing Tax Credit Commitment from the preceding Application Round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application Round.

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

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 the staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency. Staff will consider the request and proceed as it deems appropriate under the applicable rules including, if the Application in question is determined by staff to not be a priority Application, not reviewing the matter further. Staff actions are not subject to RFAD, as the request does not bring new information to staff's attention. Requestors must provide, at the time of filing the challenge, all briefings, documentation, and other information that the requestor offers in support of the deficiency. A copy of the request and supporting information must be provided 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. The results of a RFAD may not be appealed by the Requestor.

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, 2016.

TRD-201604742
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 936-7834

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TITLE 13. CULTURAL RESOURCES

PART 3. TEXAS COMMISSION ON THE ARTS

CHAPTER 35. A GUIDE TO PROGRAMS AND SERVICES

13 TAC §35.1

The Texas Commission on the Arts (Commission) proposes an amendment to §35.1, concerning a Guide to Programs and Services.

The purpose of the amendment is to be consistent with changes to programs and services of the Commission as revised September 2016.

Gary Gibbs, Executive Director, Texas Commission on the Arts, has determined that, for the first five-year period the proposal is in effect, there will be no fiscal implications for state or local government as a result of enforcing the rule as proposed.

Mr. Gibbs also 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 rule will be an updated rule. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There will be no effect to small or micro businesses.

Comments on the proposal may be submitted to Dana Swann, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406. Comments will be accepted for 30 days upon publication of this proposal in the *Texas Register.*

The amendment is proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

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

§35.1. A Guide to Programs and Services.

The Commission adopts by reference a Guide to Programs and Services (revised September 2016 [~~June~~ ~~2015~~]). This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available online at www.arts.state.tx.us.

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, 2016.

TRD-201604738
Gary Gibbs
Executive Director
Texas Commission on the Arts
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 936-6564

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PROCEDURAL RULES

The Public Utility Commission of Texas (commission) proposes repeal of §22.181, relating to Dismissal of a Proceeding, new §22.181, relating to Dismissal of a Proceeding, and amendment to §22.182, relating to Summary Decision. The proposed repeal, new, and amended sections will clarify the procedures that apply to motions to dismiss and motions for summary decision. Project Number 46199 is assigned to this proceeding.

Stephen Journeay, Director of the Commission Advising and Docket Management Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Journeay has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarified procedures for motions to dismiss and motions for summary decision. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Mr. Journeay has also determined that for each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on October 19, 2016. The request for a public hearing must be received by October 14, 2016.

Comments on the proposed amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by October 14, 2016. Sixteen copies of comments to the proposed amendments are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 46199.

SUBCHAPTER J. SUMMARY PROCEEDINGS

16 TAC §22.181

The repeal is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (West 2016) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Reference to Statutes: PURA §14.002 and §14.052.

§22.181. Dismissal of a Proceeding.

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, 2016.

TRD-201604704
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 936-7223

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16 TAC §22.181, §22.182

The new section and amendment are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (West 2016) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Reference to Statutes: PURA §14.002 and §14.052.

§22.181. Dismissal of a Proceeding.

(a) Dismissal of a proceeding. Upon the motion of the presiding officer or the motion of any party, the presiding officer may recommend that the commission dismiss, with or without prejudice, any proceeding for any reason specified in this section.

(b) Dismissal of issues within a proceeding. Upon the motion of the presiding officer or the motion of any party, the presiding officer may dismiss or may recommend that the commission dismiss, with or without prejudice, one or more issues within a proceeding for any reason specified in this section.

(c) Dismissal without hearing. A dismissal under this section requires a hearing unless the facts necessary to support the dismissal are uncontested or are established as a matter of law.

(d) Reasons for dismissal. Dismissal of a proceeding or issues within a proceeding may be based on one or more of the following reasons:

(1) lack of jurisdiction;

(2) moot questions or obsolete petitions;

(3) res judicata;

(4) collateral estoppel;

(5) unnecessary duplication of proceedings;

(6) failure to prosecute;

(7) failure to amend an application such that it is sufficient after repeated determinations that the application is insufficient;

(8) failure to state a claim for which relief can be granted;

(9) gross abuse of discovery;

(10) proper withdrawal of an application; or

(11) other good cause shown.

(e) Motion for dismissal, responses, and replies. Dismissal may be made upon the motion of the presiding officer or the motion of any party.

(1) A party's motion for dismissal must specify at least one of the grounds for dismissal identified in subsection (d) of this section. The motion must include a statement that explains the basis for the dismissal and if necessary:

(A) A statement that sets forth all material facts that support the motion; and

(B) An affidavit that supports the motion and that includes evidence that is not found in the then-existing record.

(2) A presiding officer's motion shall be provided by written order or stated in the record and must specify one or more grounds for dismissal identified in subsection (d) of this section and a clear and concise statement of the facts supporting the dismissal.

(3) The party that initiated the proceeding shall have 20 days from the date of receipt to respond to a motion to dismiss. The response must contain a statement of reasons the party contends the motion to dismiss should not be granted, and if necessary:

(A) A statement that refers to each material fact identified in the motion to dismiss as uncontested that the responding party contends is contested; and

(B) An affidavit that supports the response to the motion to dismiss and that includes evidence that is not found in the then-existing record.

(4) Replies to a response to a motion to dismiss may be made only by leave of and as directed by the presiding officer.

(f) Action on a motion to dismiss. Action on a motion to dismiss shall conform to this subsection.

(1) If a hearing on the motion to dismiss is held, that hearing shall be confined to the issues raised by the motion to dismiss.

(2) If the presiding officer determines that all issues within a the proceeding should be dismissed, the presiding officer must may prepare a proposal for decision in accordance with §22.261 of this title (relating to Proposals for Decision) to that effect, unless the reason for dismissal is solely the proper withdrawal of an application under subsection (d)(10) of this section, in which case the presiding officer may or issue an order dismissing the proceeding. The commission shall consider the proposal for decision as soon as is practicable.

(3) If the presiding officer determines that one or more issues within a proceeding should be dismissed, the presiding officer may issue a proposal for decision or an interim order dismissing such issues. If the partial dismissal is made by the presiding officer's interim order, the order may be appealed under §22.123 of this title (relating to Appeal of an Interim Order and Motions for Reconsideration of Interim Order Issued by the Commission).

(4) An order of the presiding officer dismissing a proceeding under paragraph (2) of this subsection is the final order of the commission and is subject to motions for rehearing under §22.264 of this title (relating to Rehearing).

(g) Withdrawal of application. An application may be withdrawn in accordance with this subsection.

(1) A party that initiated a proceeding may withdraw its application without prejudice to refiling of same, at any time before that party has presented its direct case.

(2) After the presentation of its direct case, but prior to the issuance of a proposed order or proposal for decision or after the matter has otherwise been set on an open meeting agenda, a party may request to withdraw its application with or without prejudice to refiling of same,

and withdrawal may be granted only upon a finding of good cause by the presiding officer.

(3) A request to withdraw an application after a proposed order or proposal for decision has been issued or after the matter has otherwise been set on an open meeting agenda requires a finding of good cause by the commission. In ruling on the request, the commission will weigh the importance of the matter being addressed to the jurisprudence of the commission and the public interest.

(4) If an application is authorized to be withdrawn, the presiding officer shall issue an order of dismissal stating whether the dismissal is with or without prejudice. Such order must, if applicable, specify the facts on which good cause is based and the basis of the dismissal and is the final order of the commission subject to motions for rehearing under §22.264 of this title.

§22.182. Summary Decision.

(a) Motion for summary decision. The presiding officer, on motion by any party, may grant a motion for summary decision on any or all issues to the extent that the pleadings, affidavits, materials obtained by discovery or otherwise, admissions, matters officially noticed in accordance with §22.222 of this title (relating to Official Notice), or evidence of record show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor, as a matter of law, on the issues expressly set forth in the motion.

(b) Filing and contents of motion. Any party to a proceeding may move for summary decision on any or all of the issues. The motion must [~~may~~] be filed [~~at any time~~] before the close of the hearing on the merits or before the issuance of a proposal for decision or proposed order if no hearing is held, unless the time to file is extended by order of the presiding officer. The party filing the motion shall demonstrate that the issue or issues may be resolved by summary decision in accordance with the standard set forth in subsection (a) of this section. Affidavits in support of the motion shall be based on personal knowledge and shall set forth such facts as would be admissible in evidence. A motion for summary decision shall specifically describe the facts upon which the request for summary decision is based, the information and materials which demonstrate those facts, and the laws or legal theories that entitle the movant to summary decision.

(c) - (d) (No change.)

(e) No further hearing. No further evidentiary hearing shall be held on issues for which summary decision has been granted. [~~The presiding officer will issue a Proposal for Decision or interim order on the issues recommended to be resolved by summary decision. Parties may file exceptions and replies to exceptions to a Proposal for Decision recommending resolution of issues by summary decision. An order granting or denying partial summary decision is appealable to the commission.~~]

(f) Action on the motion. The presiding officer must issue a proposal for decision if all issues will be resolved by summary decision. The presiding officer may issue an interim order or a proposal for decision if not all issues will resolved by summary decision. Such a partial summary decision may result if the motion for summary decision does not include all issues or, if the motion does include all issues, the presiding officer denies summary decision on some issues. Parties may file exceptions and replies to exceptions to a proposal for decision recommending resolution of issues by summary decision. An interim order granting partial summary decision may be appealed to the commission under §22.123 of this title (relating to Appeal of an Interim Order and Motions for Reconsideration of Interim Order Issued by the Commission).

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, 2016.

TRD-201604705
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 936-7223

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SCHOOL FACILITIES

The Texas Education Agency (TEA) proposes the repeal of §61.1033, an amendment to §61.1036, and new §61.1040, concerning school facilities standards. The proposed revisions would update facility standards rules by repealing a section outlining standards for construction before 2004, amending the title of a section to clarify the years to which the section applies and making minor technical corrections, and adding a new section for construction beginning in 2017.

Texas Education Code (TEC), §46.008, requires the commissioner to establish standards for the adequacy of school facilities, including requirements related to space, educational adequacy, and construction quality. All new facilities constructed after September 1, 1998, must meet the standards to be eligible to be financed with state or local tax funds. Facility standards have been adopted in rule since 1998 in 19 TAC §61.1033, School Facilities Standards for Construction before January 1, 2004. In 2003, 19 TAC §61.1036, School Facilities Standards for Construction on or after January 1, 2004, was adopted to update the standards for newer construction.

The proposed revisions to 19 TAC Chapter 61, Subchapter CC, would update facility standards rules as follows.

19 TAC §61.1033

Section 61.1033 would be repealed. The agency has determined that it is not necessary to maintain all previous facility standards in rule. However, TEA will continue to maintain the standards on the agency website.

19 TAC §61.1036

The title of §61.1036 would be amended to clarify that the section's facilities standards apply to new construction between January 1, 2004, and December 31, 2016. In addition, a correction would be made to remove a reference to the voluntary indoor air quality guidelines adopted by the Texas Department of State Health Services since the 84th Texas Legislature, 2015, removed the requirement that the guidelines be adopted by a state agency. Other corrections would include updating the name of the "Indoor Air Quality Design Tools for Schools" program administered by the U.S. Environmental Protection Agency and

amending a reference to the Texas accessibility standards in Texas Government Code, Chapter 469.

19 TAC §61.1040

Proposed new §61.1040, School Facilities Standards for Construction on or after January 1, 2017, would be added to ensure that the new facility standards are well aligned with current curriculum and best practices and that the standards account for the ways that technology has affected and will continue to affect the requirements of educational facilities. The proposed new standards would be similar to the facility standards adopted in §61.1036. Significant differences in the new rule would be as follows.

19 TAC §61.1040(a)

The new rule would include language in the definition of *educational specifications* that makes development of the educational specifications a collaborative process between the school district and the architect or engineer. The definition would also require that the board of trustees and superintendent sign the original version of and any modifications to the educational specifications, and it would specify that when developing the educational standards, the school district must consult the Texas School Safety Center's safety and security standards. In addition, the facility's security plan would not be included in the requirements for the educational specifications, but the specifications would be required to include the furniture and equipment needed to support instruction, the technology infrastructure, and provisions for any planned sustainable features.

A description of the new grade level category "other school level" would be added to allow school districts to specify the grade levels served at a school.

The term *library* would be updated to *library media centers,* and the definition would be modified.

Language relating to the long-range school facility plan would specify that the plan should include a technology assessment, safety and security as a criteria for site suitability, and a demographic study if necessary.

The definition of *major space renovations* would include additional construction criteria and clarify that when a refurbishment does not meet the definition of a major space renovation, the facility standards that were in effect when the school was built or last underwent a major space renovation shall take precedence.

19 TAC §61.1040(c)

A requirement would be included that the architect or engineer must certify before the facility design is final that the design meets applicable building codes.

19 TAC §61.1040(d)

The new rule would not include the provision allowing districts to seek TEA approval for alternate classroom designs with square feet measurements less than those specified in the rule.

School districts would be required, rather than encouraged, to provide extra square footage for classrooms with large furniture and equipment and classes that are normally larger than 25 students.

Districts that use an innovative model would be required to post certain documents on the district's website.

The list of design criteria that a school district must provide to the architect or engineer would include non-uniform-sized equipment and the types of services and programs that will be provided in the special education classrooms.

Language relating to general classroom size requirements would include provisions for classrooms with significantly more or less than 22 students at the elementary school level or significantly more or less than 25 students at the secondary school level.

Information related to computer classrooms would not be included in the new rule.

The minimum square feet per classroom for combination science laboratories/classrooms would be increased for the middle school level.

Language would specify that the ambient temperature of a chemical storage room shall be controlled year-round and that the size of hazardous chemical storage shall be in addition to minimum classroom size. Specifications for filtered fume hoods would be included, built-in eye/face washes and safety showers would be required to be accessible within 10 seconds for each person in the room, and flushing and drainage specifications would be added per ANSI Z358. Science laboratories and science laboratories/classrooms would be required to be designed with a clear line of vision that enables teachers to supervise students, and a requirement would be included that each science room have a minimum of 10 square feet per student for preparation, equipment, and materials storage.

The new rule would increase special education classroom size requirements based on input from TEA staff in the area of special education.

The reading/reference area of the library media center would be permitted to be dispersed throughout the facility.

19 TAC §61.1040(f)

The construction quality standards would require that all new facilities have fire suppression systems and be designed to control visitor access.

Language would be included to require portable, modular buildings to comply with all space, minimum square foot, and design requirements and either have or be within 500 feet of an accessible toilet.

Language stating that school districts should use the voluntary indoor air quality guidelines adopted by the Texas Department of State Health Services under the Texas Health and Safety Code, Chapter 385, would be removed. The 84th Texas Legislature, 2015, removed the requirement that the guidelines be adopted by a state agency.

Finally, a requirement would be included that school districts ensure facilities are constructed to comply with multi-hazard emergency operations plans adopted under TEC, §37.108.

The proposed rule action would require school districts to complete a form certifying that facility standards have been met.

The proposed rule action would require school districts to retain the certification form in its files indefinitely until review and/or submittal is required by the TEA.

FISCAL NOTE. Kara Belew, deputy commissioner for finance administration, has determined that for the first five-year period the rule actions are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule actions. There is no effect on local economy for the first five years that the proposed rule actions are in effect;

therefore, no local employment impact statement is required under Texas Government Code, §2001.022

PUBLIC BENEFIT/COST NOTE. Ms. Below has determined that for each year of the first five years the rule actions are in effect the public benefit anticipated as a result of enforcing the rule actions will be to upgrade the requirements for adequate and safe school construction in Texas. There is no anticipated economic cost to persons who are required to comply with the proposed rule actions.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins September 23, 2016, and ends October 24, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to *rules@tea.texas.gov.* 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, 2016.

19 TAC §61.1033

STATUTORY AUTHORITY. The repeal is proposed under the Texas Education Code (TEC), §46.002, which authorizes the commissioner to adopt rules for the administration of the instructional facilities allotment and specifies that the rules may limit the amount of the allotment used to construct, acquire, renovate, or improve an instructional facility that may also be used for noninstructional or extracurricular activities; and TEC, §46.008, which requires the commissioner to establish standards for adequacy of school facilities, including requirements related to space, educational adequacy, and construction quality. All new facilities constructed after September 1, 1998, must meet the standards to be eligible to be financed with state or local tax funds.

CROSS REFERENCE TO STATUTE. The repeal implements the Texas Education Code, §46.002 and §46.008.

§61.1033. School Facilities Standards for Construction before January 1, 2004.

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, 2016.

TRD-201604760
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 475-1497

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19 TAC §61.1036, §61.1040

STATUTORY AUTHORITY. The amendment and new section are proposed under the Texas Education Code (TEC), §46.002, which authorizes the commissioner to adopt rules for the administration of the instructional facilities allotment and specifies that the rules may limit the amount of the allotment used to construct, acquire, renovate, or improve an instructional facility that may also be used for noninstructional or extracurricular activities; and TEC, §46.008, which requires the commissioner to establish standards for adequacy of school facilities, including requirements related to space, educational adequacy, and construction quality. All new facilities constructed after September 1, 1998, must meet the standards to be eligible to be financed with state or local tax funds.

CROSS REFERENCE TO STATUTE. The amendment and new section implement the Texas Education Code, §46.002 and §46.008.

§61.1036. School Facilities Standards for Construction Between [~~on or after~~] January 1, 2004, and December 31, 2016.

(a) Definitions and procedures. The following words, terms, and procedures, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Architect--An individual registered as an architect under the Texas Occupations Code, Chapter 1051, and responsible for compliance with the architectural design requirements and all other applicable requirements of the Texas Occupations Code, Chapter 1051.

(2) Educational program--A written document, developed and provided by the district, that includes the following information:

(A) a summary of the school district's educational philosophy, mission, and goals; and

(B) a description of the general nature of the district's instructional program in accordance with §74.1 of this title (relating to Essential Knowledge and Skills). The written educational program should describe:

(i) the learning activities to be housed, by instructional space;

(ii) how the subject matter will be taught (methods of instructional delivery);

(iii) the materials and equipment to be used and stored;

(iv) utilities and infrastructure needs; and

(v) the characteristics of furniture needed to support instruction.

(3) Educational specifications--A written document for a proposed new school facility or major space renovation that includes a description of the proposed project, expressing the range of issues and alternatives. School districts that do not have personnel on staff with experience in developing educational specifications shall use the services of a design professional or consultant experienced in school planning and design to assist in the development of the educational specifications. The school district shall allow for input from teachers, other school campus staff, and district program staff in developing the educational specifications. The following information should be included in the educational specifications:

(A) the instructional programs, grade configuration, and type of facility;

(B) the spatial relationships--the desired relationships for the functions housed at the facility:

(i) should be developed by the school district to support the district's instructional program;

(ii) should identify functions that should be:

(I) adjacent to, immediately accessible;

(II) nearby, easily accessible; and

(III) removed from or away from; and

(iii) should relate to classroom/instructional functions, instructional support functions, building circulation, site activities/functions, and site circulation;

(C) number of students;

(D) a list of any specialized classrooms or major support areas, noninstructional support areas, outdoor learning areas, outdoor science discovery centers, living science centers, or external activity spaces;

(E) a schedule of the estimated number and approximate size of all instructional and instructional support spaces included in the facility;

(F) estimated budget for the facility project;

(G) school administrative organization;

(H) provisions for outdoor instruction;

(I) hours of operation that include the instructional day, extracurricular activities, and any public access or use;

(J) the safety of students and staff in instructional programs, such as science and vocational instruction; and

(K) the overall security of the facility.

(4) Engineer--An individual registered as an engineer under the Texas Occupations Code, Chapter 1001, and responsible for compliance with the engineering design requirements and all other applicable requirements of the Texas Occupations Code, Chapter 1001.

(5) Grade levels:

(A) elementary school level--a school facility that includes some or all grades from prekindergarten through Grade 5 or Grade 6;

(B) middle school level--a school facility that includes some or all grades from Grade 6 through Grade 8 or Grade 9, or a school facility that includes only Grade 6;

(C) high school level--a school facility that includes some or all grades from Grade 9 or Grade 10 through Grade 12, or a school facility that includes only Grade 9; and

(D) secondary school level--a school facility that includes some or all grades from Grade 6 through Grade 12.

(6) Hazardous chemical--As defined by the Texas Health and Safety Code, Chapter 502, Hazard Communication Act.

(7) Instructional space--General classrooms, specialized classrooms, outdoor learning areas, and major support areas.

(8) Library--Library will include the following minimum requirements:

(A) reading/instructional area;

(B) reference/independent study area;

(C) stack area;

(D) circulation desk/area;

(E) computer/online reference areas; and

(F) necessary ancillary areas, such as offices, workrooms, head-end room, and storage rooms.

(9) Long-range school facility plan--School districts are encouraged to formulate a long-range facilities plan prior to making major capital investments. When formulating a plan, a school district's process should allow for input from teachers, students, parents, taxpayers, and other interested parties that reside within the school district. Major considerations should include:

(A) a description of the current and future instructional program and instructional delivery issues;

(B) the age, condition, and educational appropriateness of all buildings on the campus (in district), considering condition of all components and systems as well as design flexibility, including an estimate of cost to replace or refurbish and appropriate recommendations;

(C) verification of the suitability of school site(s) for the intended use, considering size, shape, useable land, suitability for the planned improvements, and adequate vehicular and pedestrian access, queuing, parking, playgrounds and fields, etc.; and

(D) a timeline and a series of recommendations to modify or supplement existing facilities to support the district's instructional program.

(10) Major space renovations--Renovations to all or part of the facility's instructional space where the scope of the work in the affected part of the facility involves substantial renovations to the extent that most existing interior walls and fixtures are demolished and then subsequently rebuilt in a different configuration and/or function. Other renovations associated with repair or replacement of architectural interior or exterior finishes; fixtures; equipment; and electrical, plumbing, and mechanical systems are not subject to the requirements of subsections (d) and (e) of this section, but shall comply with applicable building codes as required by subsection (f) of this section.

(11) Portable, modular building--An industrialized building as defined by the Texas Occupations Code, §1202.003, or any other manufactured or site-built building that is capable of being relocated and is used as a school facility.

(12) Square feet per student--The net square footage of a room divided by the maximum number of students to be housed in that room during any single class period.

(13) Square feet per room measurements--The net square footage of a room includes exposed storage space, such as cabinets or shelving, but does not include hallway space, classroom door alcoves, or storage space, such as closets or preparation offices. The net square footage of a room shall be measured from the inside surfaces of the room's walls.

(14) Abbreviations:

(A) ANSI--American National Standards Institute;

(B) ICC--International Code Council; and

(C) NFPA--National Fire Protection Association.

(b) Implementation date. The requirements for school facility standards shall apply to projects for new construction or major space renovations for which the construction documents have been approved by a school district board of trustees, or a board's authorized representative, on or after January 1, 2004. For projects for which a school district approved the construction documents prior to January 1, 2004, if a school district makes changes or revisions to the design of the projects on or after January 1, 2004, and before the end of construction, the

changes or revisions are subject to the standards specified in §61.1033 of this title (relating to School Facilities Standards for Construction before January 1, 2004). For projects funded from bond elections passed prior to October 1, 2003, and for which a contract for construction has been awarded no later than December 31, 2005, a school district may comply with the standards specified in §61.1033(d)(2)(B)(ii) of this title in lieu of the standards specified in subsection (d)(5)(C)(iii) of this section, and with the standards specified in §61.1033(d)(2)(C)(ii) of this title in lieu of the standards specified in subsection (d)(5)(D)(ii) of this section.

(c) Certification of design and construction.

(1) In this section, the word "certify" indicates that the architect or engineer has reviewed the standards contained in this chapter and used the best professional judgment and reasonable care consistent with the practice of architecture or engineering in the State of Texas in executing the construction documents. The architect or engineer also certifies that these documents conform to the provisions of this section, except as indicated on the certification.

(2) The school district shall notify and obligate the architect or engineer to provide the required certification. The architect's or engineer's signature and seal on the construction documents shall certify compliance.

(3) To ensure that facilities have been designed and constructed according to the provisions of this section, each of the involved parties shall execute responsibilities as follows.

(A) The school district shall provide the architect or engineer the educational program and educational specifications approved by the board of trustees as required by this subchapter, and building code specifications for the facility. If a school district has a long-range school facility plan, it shall also be provided to the architect or engineer.

(B) The architect or engineer shall perform a building code search under applicable regulations that may influence the project, and shall certify that the design has been researched before it is final.

(C) The architect or engineer shall also certify that the facility has been designed according to the provisions of this section, based on the educational program, educational specifications, long-range school facility plan, building code specifications, and all documented changes to the construction documents provided by the district.

(D) The building contractor or construction manager shall certify that the facility has been constructed in general accordance with the construction documents specified in subparagraph (C) of this paragraph. If the school district acts as general contractor, it shall make the certification required by this paragraph.

(E) When construction is completed, the school district shall certify that the facility conforms to the design requirements specified in subparagraph (A) of this paragraph.

(F) The certifications specified in subparagraphs (A)-(E) of this paragraph shall be gathered on the "Certification of Project Compliance" form developed by the Texas Education Agency (TEA). The school district will retain this form in its files indefinitely until review and/or submittal is required by representatives of the TEA.

(d) Space, minimum square foot, and design requirements.

(1) A school district shall provide instructional space if required by the district educational specifications described in subsection (e) of this section.

(2) For each type of instructional space, a district shall satisfy the requirements of this section by using the standard for square feet per room specified in paragraph (5)(B)-(D) of this subsection. For school districts with facilities that have one or more classrooms with maximum class sizes that are normally less than 22 students at the elementary level and less than 25 students at the middle or high school level, the school districts may satisfy the requirements of this section for those classrooms by using the standard for the minimum square feet per student specified in paragraph (5)(B)-(D) of this subsection. These classrooms shall be designed on the basis of expected maximum class size, and not expected average class size. Upon submission by a district, alternate classroom designs with square feet per room measurements less than those specified in this subsection may be considered for approval by the TEA division responsible for state funding on a case-by-case basis.

(3) School districts should consider providing extra square footage in classrooms where the use on a regular basis of multiple computers, large furniture, televisions, mobile laptop carts, mobile video conferencing carts, monitors on carts, or the like is anticipated. To improve circulation and usability of classroom space, school districts with class sizes that are normally larger than 25 students for Grades 5-12 should also consider increasing the minimum classroom size by adding the appropriate minimum square feet per student specified in paragraph (5)(B)-(D) of this subsection for each student in excess of 25.

(4) Compliance with the standards specified in paragraph (5)(B)-(D) of this subsection will be evaluated based on the school district's intended full-time and/or part-time use of the areas, and not the name of the areas as identified in the construction documents.

(5) Instructional area size and design requirements.

(A) Design criteria. The school district shall provide the architect or engineer with all expected class sizes for the facilities, with the list of chemicals to be used in the science laboratories or science laboratory/classrooms, and with the number of computers anticipated in the library, so that the architect or engineer can adequately design the facilities to meet the criteria specified in subparagraphs (B)-(D) of this paragraph.

(B) General classrooms.

(i) Classrooms for prekindergarten-Grade 1 shall have a minimum of 800 square feet per room. School districts with small class sizes may have classrooms that provide a minimum of 36 square feet per student.

(ii) Classrooms at the elementary school level for Grades 2 and up shall have a minimum of 700 square feet per room. School districts with small class sizes may have classrooms that provide a minimum of 32 square feet per student.

(iii) Classrooms at the secondary school level shall have a minimum of 700 square feet per room. School districts with small class sizes may have classrooms that provide a minimum of 28 square feet per student.

(C) Specialized classrooms.

(i) A computer classroom used for the teaching of computer skills shall have a minimum of 900 square feet per room. The minimum room size is ideal for 25 students; 36 square feet per student should be added to the minimum square footage for each student in excess of 25. School districts with small class sizes may have computer classrooms that provide a minimum of 36 square feet per student. School districts should consider the heat output of computers when designing the ventilation system that serves a computer classroom.

(ii) Computer laboratories that are not used regularly for scheduled instruction but that are intended to support other in-

structional areas shall have a minimum of 25 square feet per computer station. For computer laboratories where the use of portable computers, such as laptop computers, is anticipated, the size may be reduced to 20 square feet per computer station.

(iii) The following provisions shall apply to combination science laboratories/classrooms, where each student has a lab station and where typically there is a clearly defined laboratory area and a clearly defined lecture area.

(I) Combination science laboratories/classrooms shall have a minimum of 900 square feet per room at the elementary school level. The minimum room size is adequate for 22 students; 41 square feet per student shall be added to the minimum square footage for each student in excess of 22.

(II) Combination science laboratories/classrooms shall have a minimum of 1,200 square feet per room at the middle school level. The minimum room size is adequate for 24 students; 50 square feet per student shall be added to the minimum square footage for each student in excess of 24.

(III) Combination science laboratories/classrooms shall have a minimum of 1,400 square feet per room at the high school level. The minimum room size is adequate for 24 students; 58 square feet per student shall be added to the minimum square footage for each student in excess of 24.

(IV) School districts with small class sizes may have combination science laboratories/classrooms that provide a minimum of 41 square feet per student but not less than 700 square feet total at the elementary school level, a minimum of 50 square feet per student but not less than 950 square feet total at the middle school level, and a minimum of 58 square feet per student but not less than 1,100 square feet total at the high school level.

(iv) For districts that choose to use separate science classrooms and science laboratories, the following provisions shall apply.

(I) A science classroom shall be a minimum of 700 square feet regardless of grade level served.

(II) A science laboratory shall have a minimum of 800 square feet at the elementary school level. The minimum laboratory size is adequate for 22 students; 36 square feet per student shall be added to the minimum square footage for each student in excess of 22.

(III) A science laboratory shall have a minimum of 900 square feet at the middle school level. The minimum laboratory size is adequate for 24 students; 38 square feet per student shall be added to the minimum square footage for each student in excess of 24.

(IV) A science laboratory shall have a minimum of 1,000 square feet at the high school level. The minimum laboratory size is adequate for 24 students; 42 square feet per student shall be added to the minimum square footage for each student in excess of 24.

(V) Science classrooms shall be provided at a ratio not to exceed 2:1 of science classrooms to science laboratories at the middle school and high school levels. The science laboratories shall be located convenient to the science classrooms they serve.

(VI) School districts with small class sizes may have science classrooms that provide a minimum of 32 square feet per student, and they may have science laboratories that provide a minimum of 36 square feet per student but not less than 600 square feet total at the elementary school level, a minimum of 38 square feet per student but not less than 700 square feet total at the middle school level, and a minimum of 42 square feet per student but not less than 800 square feet total at the high school level.

(v) If hazardous or vaporous chemicals are to be used in the science laboratories or science laboratories/classrooms, a separate chemical storage room shall be provided. The chemical storage room shall be separate from, and shall not be combined as part of, a preparation room or an equipment storage room; however, the chemical storage room may be located so that access is through a preparation room or equipment storage room. The chemical storage room shall be secure to prevent access to chemicals by students. One chemical storage room may be shared among multiple laboratories or laboratories/classrooms.

(vi) Each school science laboratory, science classroom, science laboratory/classroom, science preparatory room, and chemical storage room shall include the following provisions.

(I) A built-in fume hood shall be provided in each high school level chemistry or advanced placement chemistry laboratory or laboratory/classroom. A built-in fume hood should also be provided in each high school level integrated physics and chemistry laboratory or laboratory/classroom. The exhaust shall be vented to the outside above the roof and away from air vents.

(II) A built-in eye/face wash that can wash both eyes simultaneously shall be provided in each room where hazardous chemicals are used by instructors and/or students. The eye/face wash shall comply with the ANSI Standards for Shower and Eyewash Equipment (Z358.1). The tepid water required by ANSI Z358.1 is not required to come from a heated source; however, school districts that commonly experience lengthy periods of extremely cold temperatures during the winter season should consider a tepid water system with a heated source.

(III) A built-in safety shower shall be provided in each high school level chemistry or advanced placement chemistry laboratory or laboratory/classroom. A built-in safety shower should also be provided in each high school level integrated physics and chemistry laboratory or laboratory/classroom. The safety shower shall comply with the ANSI Standards for Shower and Eyewash Equipment (Z358.1). The tepid water required by ANSI Z358.1 is not required to come from a heated source; however, school districts that commonly experience lengthy periods of extremely cold temperatures during the winter season should consider a tepid water system with a heated source.

(IV) Ventilation systems serving science rooms shall be designed and constructed so that under normal operation the return air from the science rooms is not recirculated into non-science areas. In the chemical storage rooms, a ventilation system shall exhaust the air to the outside, and shall not be recirculated back into the space.

(V) An exhaust fan that is controlled by the instructor shall be provided in all rooms where hazardous or vaporous chemicals are to be used or stored. The exhaust fan shall be of sufficient size to exhaust the total volume of air in the room within 15 minutes. The exhaust shall be vented to the outside above the roof and away from air vents.

(VI) A minimum of 6 linear feet of total horizontal workspace, such as lab stations, lab tables, countertops, desktops, or some combination of these, shall be provided for each student in each middle school and high school science laboratory and science laboratory/classroom.

(VII) If electricity, gas, and/or water are provided in student areas, emergency shut-off controls shall be provided for each

in a location accessible to the instructor but not easily accessible to students.

(vii) Special education classrooms shall have a minimum of 400 square feet per room. School districts with small class sizes may have rooms that provide a minimum of 40 square feet per student.

(viii) Specialized classrooms not otherwise identified within these standards shall at a minimum comply with the requirements specified in subparagraph (B) of this paragraph.

(ix) Compliance with the standards specified in clauses (iii) and (iv) of this subparagraph will be evaluated based on the average class size in those classrooms.

(D) Major support areas.

(i) Primary gymnasiums or physical education space, if required by the district's educational program, shall have a minimum of 3,000 square feet at the elementary school level; 4,800 square feet at the middle school level; and 7,500 square feet at the high school level.

(ii) A school district shall consider the School Library Standards and Guidelines as adopted under Texas Education Code, §33.021, when developing, implementing, or expanding library services. Libraries for campuses with a planned student capacity of 100 or less shall be a minimum of 1,400 square feet. Libraries for campuses with a planned student capacity of 101 to 500 shall be a minimum of 1,400 square feet plus an additional 4.0 square feet for each student in excess of 100. Libraries for campuses with a planned student capacity of 501 to 2,000 shall be a minimum of 3,000 square feet plus an additional 3.0 square feet for each student in excess of 500. Libraries for campuses with a planned student capacity of 2,001 or more shall be a minimum of 7,500 square feet plus an additional 2.0 square feet for each student in excess of 2,000. A school district that plans to locate more than 12 student computers in the library shall add 25 square feet of space for each additional computer anticipated. The space allotments within the library shall be based on a formula of 30% for the reading/instructional area and reference/independent study area; 45% for the stack area, circulation desk/area, and computer/online reference areas; and 25% for the necessary ancillary areas. Windows shall be placed so that adequate wall and floor space remains to accommodate the shelving necessary for the library collection size established by the School Library Standards and Guidelines.

(6) It is not the intent of these standards to limit the use of nontraditional, alternative, sustainable, and/or innovative school designs. A nontraditional design model is one that works to break down the scale of the school and to improve the connection of the student to the resources available within the school environment. If a school district chooses to use a nontraditional model, the following provisions shall apply.

(A) The instructional spaces where teachers will instruct groups of students in specialized coursework shall meet the standard, as appropriate based on group size, for square feet per room or for the minimum square feet per student specified in paragraph (5)(C) of this subsection.

(B) Large group lecture spaces that do not use tables or desks for the students shall have a minimum of 15 square feet per student. Large group lecture spaces that do use tables or desks for the students shall meet the standard, as appropriate based on group size, for square feet per room or for the minimum square feet per student specified in paragraph (5)(B) of this subsection. A minimum of 150 square feet shall be provided for each small group, conference, or office space area or room.

(C) An individual student learning area that is assigned to a specific student shall have a minimum of 35 square feet. An individual student learning area that is not assigned to a specific student shall have a minimum of 25 square feet.

(D) If necessary under the design model, up to half of the reading/reference area function of the library may be dispersed throughout the facility outside the normal library boundaries. The sum total square footage of all library-related areas shall meet the minimum square feet specified for libraries in paragraph (5)(D)(ii) of this subsection.

(7) Other space requirements should be developed from school district design criteria as required to meet educational program needs.

(e) Educational adequacy. A proposed new school facility or major space renovation of an existing school facility meets the conditions of educational adequacy if the design of the proposed project is based on the requirements of the school district's educational program, the educational specifications, and the student population that it serves.

(f) Construction quality.

(1) Districts with existing building codes.

(A) A school district located in an area that has adopted local construction codes shall comply with those codes (including building, fire, plumbing, mechanical, fuel gas, energy conservation, and electrical codes). The school district is not required to seek additional plan review of school facilities projects other than what is required by the local building authority. If the local building authority does not require a plan review, then a qualified, independent third party, not employed by the design architect or engineer, shall review the plans and specifications for compliance with the requirements of the adopted building code. The plan review shall examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design. The review shall be conducted prior to the commencement of construction and must be conducted by a qualified building code consultant or a third party architect or engineer. A qualified building code consultant is a person who maintains, as a minimum, a current certification from the ICC. Associated fees shall be the responsibility of the school district. The reviewer shall prepare a summary list of any conditions not in conformance with the provisions of the adopted building code and is required to send a copy to the school district, design architect, or engineer. The design architect or engineer shall revise the plans and specifications as necessary and certify code compliance to the district. The reviewer, in his or her reasonable judgment and with the approval of the local building authority, may allow a limited number of variances from the codes if such variances do not negatively affect the quality or safety of the facility. Any disputes shall be a matter for contract resolution.

(B) For school facilities projects subject to these standards, and where not otherwise required by local code, fire alarm systems shall be provided. Fire alarm systems shall be designed and installed in accordance with applicable portions of the latest edition of the International Building Code (IBC) and International Fire Code (IFC).

(C) As part of their school facilities projects and where not otherwise required by local code, school districts should consider providing automatic sprinkler systems for fire protection, fire suppression, and life safety. In absence of a local code, each automatic sprinkler system shall be installed in accordance with the latest edition of the IBC and IFC.

(D) If the local building authority does not conduct reviews and inspections during the course of construction of the facility,

then a qualified, independent third party, not employed by the design architect or engineer or contractor, should perform a reasonable number of reviews and inspections during the course of construction for compliance with the requirements of the adopted building code. The reviews and inspections should examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design. A qualified code inspector is a person who maintains, as a minimum, a current certification from the ICC as a combination commercial inspector and commercial energy inspector.

(2) Districts without existing building codes.

(A) A school district located in an area that has not adopted local building codes shall adopt and use the building code and related fire, plumbing, mechanical, fuel gas, and energy conservation codes from the latest edition of the family of International Codes as published by the ICC; and the National Electric Code as published by the NFPA. As an alternative, a school district may adopt the building code and related fire, plumbing, mechanical, fuel gas, and energy conservation codes as adopted by a nearby municipality or county. A qualified, independent third party, not employed by the design architect or engineer, shall review the plans and specifications for compliance with the requirements of the adopted building code. The plan review shall examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design. The review shall be conducted prior to the commencement of construction and must be conducted by a qualified building code consultant or a third party architect or engineer. A qualified building code consultant is a person who maintains, as a minimum, a current certification from the ICC. Associated fees shall be the responsibility of the school district. The reviewer shall prepare a summary list of any conditions not in conformance with the provisions of the adopted building code and is required to send a copy to the school district, design architect, or engineer. The design architect or engineer shall revise the plans and specifications as necessary and certify code compliance to the district. The reviewer, in his or her reasonable judgment, may allow a limited number of variances from the codes if such variances do not negatively affect the quality or safety of the facility. Any disputes shall be a matter for contract resolution.

(B) For school facilities projects subject to these standards, fire alarm systems shall be provided. Fire alarm systems shall be designed and installed in accordance with applicable portions of the latest edition of the IBC and IFC.

(C) As part of their school facilities projects, school districts should consider providing automatic sprinkler systems for fire protection, fire suppression, and life safety. Each automatic sprinkler system shall be installed in accordance with the latest edition of the IBC and IFC.

(D) A qualified, independent third party, not employed by the design architect or engineer or contractor, should perform a reasonable number of reviews and inspections during the course of construction of the facility for compliance with the requirements of the adopted building code. The reviews and inspections should examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design. A qualified code inspector is a person who maintains, as a minimum, a current certification from the ICC as a combination commercial inspector and commercial energy inspector.

(3) Special provisions for portable, modular buildings. Any portable, modular building capable of being relocated that is purchased or leased for use as a school facility by a school district, whether that building is manufactured off-site or constructed on-site, must comply with all provisions of this section. Effective September 1, 2007, the following additional provisions shall apply to any portable, modular building that is purchased or leased for use as a school facility by a school district.

(A) A school district located in an area that has adopted local construction codes shall have the portable, modular building, including the construction of the foundation system and the erection and installation of the building on the foundation, inspected by the local building authority for compliance with the mandatory building codes or approved designs, plans, and specifications. The school district is not required to seek additional inspection of the portable, modular building other than what is required by the local building authority. If the local building authority does not perform inspections, then a qualified, independent third party, not employed by the design architect, engineer, contractor, or manufacturer, shall inspect the facility, including the construction of the foundation system and the erection and installation of the facility on the foundation, for compliance with the mandatory building codes or approved designs, plans, and specifications. The inspections shall be performed within 30 days of the completion of the construction, erection, and installation of the facility on the site, and the school district shall not occupy or use the facility until the independent third party makes a final determination that the facility is in compliance with all provisions of this section. For a manufactured portable, modular building that is an industrialized building as defined by the Texas Occupations Code, §1202.003, the factory inspection performed under the oversight of the Texas Department of Licensing and Regulation shall suffice to determine compliance of the building envelope with the mandatory building codes or approved designs, plans, and specifications in lieu of an inspection by the local building authority or an independent third party for a portable, modular building constructed on or after January 1, 1986; however, an inspection of the construction of the foundation system and the erection and installation of the portable, modular building on the foundation shall still be performed.

(B) A school district located in an area that has not adopted local building codes shall have the portable, modular building, including the construction of the foundation system and the erection and installation of the building on the foundation, inspected by a qualified, independent third party, not employed by the design architect, engineer, contractor, or manufacturer, for compliance with the mandatory building codes or approved designs, plans, and specifications. The inspections shall be performed within 30 days of the completion of the construction, erection, and installation of the facility on the site, and the school district shall not occupy or use the facility until the independent third party makes a final determination that the facility is in compliance with all provisions of this section. For a manufactured portable, modular building that is an industrialized building as defined by the Texas Occupations Code, §1202.003, the factory inspection performed under the oversight of the Texas Department of Licensing and Regulation shall suffice to determine compliance of the building envelope with the mandatory building codes or approved designs, plans, and specifications in lieu of an inspection by an independent third party for a portable, modular building constructed on or after January 1, 1986; however, an inspection of the construction of the foundation system and the erection and installation of the portable, modular building on the foundation shall still be performed.

(C) A qualified, independent third party inspector is a person who maintains, as a minimum, a current certification from the ICC as a combination commercial inspector and commercial energy inspector.

(D) A school district that has purchased or leased a portable, modular building for use as a school facility on or after

September 1, 2007, and before the effective date of this section, shall have the inspections required by this subsection performed within 60 days of the effective date of this section; any items of noncompliance identified during the inspections shall be brought into compliance by the school district within 90 days of the date of the inspections.

(4) Other provisions.

(A) For school facilities projects subject to these standards, an adequate technology, electrical, and communications infrastructure shall be provided. To ensure the adequacy of the infrastructure, the school district and the architect or engineer shall seek the input of the school district staff, including, but not limited to, the technology director, the library director, the program directors, the maintenance director, and the campus staff, in the planning and design of the infrastructure.

(B) As part of their school facilities projects, school districts should consider the use of designs, methods, and materials that will reduce the potential for indoor air quality problems. School districts should consult with a qualified indoor air quality specialist during the design process to ensure that the potential for indoor air quality problems after construction and occupancy of a facility is minimized. [~~School districts should use the voluntary indoor air quality guidelines adopted by the Texas Department of State Health Services under the Texas Health and Safety Code, Chapter 385.~~] School districts should [~~also~~] use the "Indoor Air Quality Design Tools for Schools" program administered by the U.S. Environmental Protection Agency.

(C) As part of their school facilities projects, school districts should consider the use of sustainable school designs. A sustainable design is a design that minimizes a facility's impact on the environment through energy and resource efficiency.

(D) School district facilities shall comply with the Texas accessibility standards [~~"Texas Accessibility Standards"~~] as promulgated under the Texas Government Code, Chapter 469, Elimination of Architectural Barriers, as prepared and administered by the Texas Department of Licensing and Regulation.

(E) School district facilities shall comply with the provisions of the Americans with Disabilities Act of 1990 (Title I and Title II).

(F) School district facilities shall comply with all other local, state, and federal requirements as applicable.

§61.1040. School Facilities Standards for Construction on or after January 1, 2017.

(a) Definitions and procedures. The following words, terms, and procedures, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Architect--An individual registered as an architect under the Texas Occupations Code, Chapter 1051, and responsible for compliance with the architectural design requirements and all other applicable requirements of the Texas Occupations Code, Chapter 1051.

(2) Educational program--A written document, developed and provided by the district, that includes the following information:

(A) a summary of the school district's educational philosophy, mission, and goals; and

(B) a description of the general nature of the district's instructional program in accordance with §74.1 of this title (relating to Essential Knowledge and Skills). The written educational program should describe:

(i) the learning activities to be housed, by instructional space;

(ii) how the subject matter will be taught (methods of instructional delivery);

(iii) the materials and equipment to be used and stored; and

(iv) utilities, technology, and other infrastructure needs.

(3) Educational specifications--A written document for a proposed new school facility or major space renovation that includes a description of the proposed project, expressing the range of issues and alternatives. During the programming and schematic design phase of designing a school facility, the school district and the architect or engineer shall work together to develop the educational specifications, and these educational specifications should be used as a starting guideline for the next facility of the same type. School districts that do not have personnel on staff with experience in developing educational specifications shall use the services of a design professional or consultant experienced in school planning and design to assist in the development of the educational specifications. The school district shall allow for input from teachers, other school campus staff, and district program staff in developing the educational specifications. The original version of the document is to be signed by the board of trustees and the superintendent, and the document should be re-signed by the board of trustees and the superintendent each time it is modified. When developing the educational specifications, the school district shall consult the safety and security standards developed by the Texas School Safety Center. The following information should be included in the educational specifications.

(A) the instructional programs, grade configuration, and type of facility;

(B) the spatial relationships--the desired relationships for the functions housed at the facility:

(i) should be developed by the school district to support the district's instructional program;

(ii) should identify functions that should be:

(I) adjacent to, immediately accessible;

(II) nearby, easily accessible; and

(III) removed from or away from; and

(iii) should relate to classroom/instructional functions, instructional support functions, building circulation, site activities/functions, and site circulation;

(C) number of students;

(D) a list of any specialized classrooms or major support areas, noninstructional support areas, or external or outdoor activity spaces;

(E) a schedule of the estimated number and approximate size of all instructional and instructional support spaces included in the facility;

(F) estimated budget for the facility project;

(G) school administrative organization;

(H) provisions for outdoor instruction;

(I) hours of operation that include the instructional day, extracurricular activities, and any public access or use;

(J) the safety of students and staff in instructional programs such as science and vocational instruction;

(K) the furniture, furnishings, and equipment needed to support instruction;

(L) technology infrastructure; and

(M) provisions for any planned sustainable features such as natural lighting, air quality, and sustainable practice.

(4) Engineer--An individual registered as an engineer under the Texas Occupations Code, Chapter 1001, and responsible for compliance with the engineering design requirements and all other applicable requirements of the Texas Occupations Code, Chapter 1001.

(5) Grade levels:

(A) elementary school level--a school facility that includes some or all grades from prekindergarten through Grade 5 or Grade 6;

(B) middle school level--a school facility that includes some or all grades from Grade 5 through Grade 8 or Grade 9;

(C) high school level--a school facility that includes some or all grades from Grade 9 or Grade 10 through Grade 12, or a school facility that includes only Grade 9;

(D) secondary school level--a school facility that includes some or all grades from Grade 6 through Grade 12; and

(E) other school level--a school facility with grades defined by the district.

(6) Hazardous chemical--As defined by the Texas Health and Safety Code, Chapter 502, Hazard Communication Act.

(7) Instructional space--General classrooms, specialized classrooms, outdoor learning areas, and major support areas.

(8) Library media centers--An area or areas in a school where a full range of materials, technology, and services from library media staff are accessible to students and school personnel.

(9) Long-range school facility plan--School districts are encouraged to formulate a long-range facilities plan prior to making major capital investments. When formulating a plan, a school district's process should allow for input from teachers, students, parents, taxpayers, and other interested parties that reside within the school district. Major considerations should include:

(A) a description of the current and future instructional program and instructional delivery issues;

(B) the age, condition, and educational appropriateness of all buildings on the campus (in district), considering condition of all components and systems as well as design flexibility, including an estimate of cost to replace or refurbish and appropriate recommendations;

(C) verification of the suitability of school site(s) for the intended use, considering size, shape, useable land, suitability for the planned improvements, and adequate vehicular and pedestrian access, queuing, parking, playgrounds and fields, etc.;

(D) a technology assessment that includes an analysis of instructional hardware and software, networks, and how technology is being used today as well as projections of how technology might be used in the future;

(E) safety and security as a criteria for site suitability;

(F) as necessary, a demographic study to project nature, size, and location of future enrollments; and

(G) a timeline and a series of recommendations to modify or supplement existing facilities to support the district's instructional program.

(10) Major space renovations--Renovations to all or part of the facility's instructional space where the scope of the work in the affected part of the facility involves substantial renovations to the extent that most existing interior walls and fixtures are demolished and then subsequently rebuilt in a different configuration and/or function or enough walls are added that 50% or more of the project area is reconfigured. Other renovations associated with repair or replacement of architectural interior or exterior finishes; fixtures; equipment; and electrical, plumbing, and mechanical systems are not subject to the requirements of subsections (d) and (e) of this section, but shall comply with applicable building codes as required by subsection (f) of this section. When a school district repurposes a classroom in a way that does not meet the definition of major space renovation (for example, refurbishing a classroom from one grade level to another), the classroom specifications in the Texas Education Agency (TEA) facility standards that were in effect when the school was built or last underwent a major space renovation shall take precedence.

(11) Portable, modular building--An industrialized building as defined by the Texas Occupations Code, §1202.003, or any other manufactured or site-built building that is capable of being relocated and is used as a school facility.

(12) Square feet per student--The net square footage of a room divided by the maximum number of students to be housed in that room during any single class period.

(13) Square feet per room measurements--The net square footage of a room includes exposed storage space, such as cabinets or shelving, but does not include hallway space, classroom door alcoves, or storage space, such as closets or preparation offices. The net square footage of a room shall be measured from the inside surfaces of the room's walls.

(14) Abbreviations:

(A) ANSI--American National Standards Institute;

(B) IBC--International Building Code;

(C) ICC--International Code Council;

(D) IFC--International Fire Code; and

(E) NFPA--National Fire Protection Association.

(b) Implementation date. The requirements for school facility standards shall apply to projects for new construction or major space renovations for which the construction documents have been approved by a school district board of trustees, or a board's authorized representative, on or after January 1, 2017. For projects for which a school district approved the construction documents prior to January 1, 2017, if a school district makes changes or revisions to the design of the projects on or after January 1, 2017, and before the end of construction, the changes or revisions are subject to the standards specified in §61.1036 of this title (relating to School Facilities Standards for Construction Between January 1, 2004, and December 31, 2016). For projects funded from bond elections passed prior to October 1, 2016, and for which a contract for construction has been awarded no later than December 31, 2016, a school district may comply with the standards that were in effect prior to October 30, 2016. These standards will be available on the TEA website.

(c) Certification of design and construction.

(1) In this section, the word "certify" indicates that the architect or engineer has reviewed the standards contained in this chapter

and used the best professional judgment and reasonable care consistent with the practice of architecture or engineering in the State of Texas in executing the construction documents. The architect or engineer also certifies that these documents conform to the provisions of this section, except as indicated on the certification.

(2) The school district shall notify and obligate the architect or engineer to provide the required certification. The architect's or engineer's signature and seal on the construction documents shall certify compliance.

(3) To ensure that facilities have been designed and constructed according to the provisions of this section, each of the involved parties shall execute responsibilities as follows.

(A) The school district shall provide the educational program and building code specifications for the facility to the architect or engineer, and the school district and the architect or engineer shall work together to develop educational specifications as specified in subsection (a)(3) of this section. The educational program and educational specifications shall be approved by the board of trustees as required by this subchapter. If a school district has a long-range school facility plan, it shall also be provided to the architect or engineer.

(B) The architect or engineer shall perform a building code search under applicable regulations that may influence the scope of work and shall certify that the design meets applicable codes before it is final.

(C) The architect or engineer shall also certify that the facility has been designed according to the provisions of this section based on the educational program, educational specifications, long-range school facility plan, building code specifications, and all documented changes to the construction documents.

(D) The building contractor or construction manager shall certify that the facility has been constructed in general accordance with the construction documents specified in subparagraph (C) of this paragraph. If the school district acts as general contractor, it shall make the certification required by this paragraph.

(E) When construction is completed, the school district shall certify that the facility conforms to the design requirements specified in subparagraph (A) of this paragraph.

(F) The certifications specified in subparagraphs (A)-(E) of this paragraph shall be gathered on the "Certification of Project Compliance" form developed by the TEA. The school district will retain this form in its files indefinitely until review and/or submittal is required by representatives of the TEA.

(d) Space, minimum square foot, and design requirements.

(1) A school district shall provide instructional space if required by the district educational specifications described in subsection (e) of this section.

(2) For each type of instructional space, a district shall satisfy the requirements of this section by using the standard for square feet per room specified in paragraph (6)(B)-(D) of this subsection. For school districts with facilities that have one or more classrooms with maximum class sizes that are normally less than 22 students at the elementary level and less than 25 students at the middle or high school level, the school districts may satisfy the requirements of this section for those classrooms by using the standard for the minimum square feet per student specified in paragraph (6)(B)-(D) of this subsection. These classrooms shall be designed on the basis of expected maximum class size and not expected average class size.

(3) School districts shall provide extra square footage to ensure that usable square feet per student, as specified in paragraph (6)(B)-(D) of this subsection, is maintained in classrooms that contain large furniture and equipment. To improve circulation and usability of classroom space, school districts with class sizes that are normally larger than 25 students for Grades 5-12 shall also increase the minimum classroom size by adding the appropriate minimum square feet per student specified in paragraph (6)(B)-(D) of this subsection for each student in excess of 25.

(4) Compliance with the standards specified in paragraph (6)(B)-(D) of this subsection will be evaluated based on the school district's intended full-time and/or part-time use of the areas and not the name of the areas as identified in the construction documents.

(5) It is not the intent of the facility standards to limit the use of nontraditional, alternative, sustainable, and/or innovative school designs. A nontraditional design model is one that works to break down the scale of the school and improve the connection of students to the resources available within the school environment. If a school district chooses to use a nontraditional model, the following provisions shall apply.

(A) The instructional spaces where teachers will instruct groups of students in specialized coursework shall meet the standard, as appropriate based on group size, for square feet per room or for the minimum square feet per student specified in paragraph (6)(C) of this subsection.

(B) Large group lecture spaces that do not use tables or desks for students shall have a minimum of 15 square feet per student. Large group lecture spaces that use tables or desks for students shall meet the standard, as appropriate based on group size, for square feet per room or for the minimum square feet per student specified in paragraph (6)(B) of this subsection.

(C) An individual student learning area that is assigned to a specific student shall have a minimum of 35 square feet. An individual student learning area that is not assigned to a specific student shall have a minimum of 25 square feet.

(D) If necessary under the design model, the reading/reference area function of the library media center may be dispersed throughout the facility outside the normal library media center boundaries. The sum total square footage of all areas related to the library media center shall meet the minimum square feet specified for library media centers in paragraph (6)(E) of this subsection.

(E) Districts that use a nontraditional model shall post on the district's website the appropriate document(s) that describe the district's nontraditional design (for example, the long-range school facility plan, the educational program, and/or the educational specifications).

(6) Instructional area size and design requirements.

(A) Design criteria. The school district shall provide the architect or engineer with the following information so that the architect or engineer can adequately design all facilities to meet the criteria specified in subparagraphs (B)-(D) of this paragraph:

(i) all expected class sizes for the facilities;

(ii) the list of chemicals and non-uniform-sized equipment to be used in the science laboratories or science laboratory/classrooms;

(iii) the number of computer work stations anticipated in the library; and

(iv) the types of services and programs to be provided in the special education classrooms.

(B) General classrooms.

(i) Classrooms for prekindergarten-Grade 1 shall have a minimum of 800 square feet of instructional space per room. School districts anticipating significantly more or less than 22 students per classroom may have classrooms that provide a minimum of 36 square feet of instructional space per student.

(ii) Classrooms at the elementary school level for Grades 2 and higher shall have a minimum of 700 square feet of instructional space per room. School districts anticipating significantly more or less than 22 students per classroom may have classrooms that provide a minimum of 32 square feet of instructional space per student.

(iii) Classrooms at the secondary school level shall have a minimum of 700 square feet of instructional space per room. School districts anticipating significantly more or less than 25 students per classroom may have classrooms that provide a minimum of 28 square feet of instructional space per student.

(C) Specialized classrooms.

(i) The following provisions shall apply to combination science laboratories/classrooms where each student has a lab station and where typically there is a clearly defined laboratory area and a clearly defined classroom area.

(I) Combination science laboratories/classrooms shall have a minimum of 900 square feet per room at the elementary school level. The minimum room size is adequate for 22 students; 41 square feet per student shall be added to the minimum square footage for each student in excess of 22.

(II) Combination science laboratories/classrooms shall have a minimum of 1,320 square feet per room at the middle school level. The minimum room size is adequate for 24 students; 55 square feet per student shall be added to the minimum square footage for each student in excess of 24.

(III) Combination science laboratories/classrooms shall have a minimum of 1,400 square feet per room at the high school level. The minimum room size is adequate for 24 students; 58 square feet per student shall be added to the minimum square footage for each student in excess of 24.

(IV) School districts with small class sizes may have combination science laboratories/classrooms that provide a minimum of 41 square feet per student but not less than 700 square feet total at the elementary school level, a minimum of 50 square feet per student but not less than 950 square feet total at the middle school level, and a minimum of 58 square feet per student but not less than 1,100 square feet total at the high school level.

(ii) For districts that choose to use separate science classrooms and science laboratories, the following provisions shall apply.

(I) A science classroom shall be a minimum of 700 square feet regardless of grade level served.

(II) A science laboratory shall have a minimum of 800 square feet at the elementary school level. The minimum laboratory size is adequate for 22 students; 36 square feet per student shall be added to the minimum square footage for each student in excess of 22.

(III) A science laboratory shall have a minimum of 900 square feet at the middle school level. The minimum laboratory size is adequate for 24 students; 38 square feet per student shall be added to the minimum square footage for each student in excess of 24.

(IV) A science laboratory shall have a minimum of 1,000 square feet at the high school level. The minimum laboratory size is adequate for 24 students; 42 square feet per student shall be added to the minimum square footage for each student in excess of 24.

(V) Science classrooms shall be provided at a ratio not to exceed 2:1 of science classrooms to science laboratories at the middle school and high school levels. The science laboratories shall be located convenient to the science classrooms they serve.

(VI) School districts with small class sizes may have science classrooms that provide a minimum of 32 square feet per student, and they may have science laboratories that provide a minimum of 36 square feet per student but not less than 600 square feet total at the elementary school level, a minimum of 38 square feet per student but not less than 700 square feet total at the middle school level, and a minimum of 42 square feet per student but not less than 800 square feet total at the high school level.

(iii) If hazardous or vaporous chemicals are to be used in the science laboratories or science laboratories/classrooms, a separate chemical storage room shall be provided. The chemical storage room shall be separate from, and shall not be combined as part of, a preparation room or an equipment storage room. However, the chemical storage room may be located so that access is through a preparation room or equipment storage room. The chemical storage room shall be secure to prevent access to chemicals by students. One chemical storage room may be shared among multiple laboratories or laboratories/classrooms. The chemical storage room's ambient temperature shall be controlled year-round so as not to exceed the allowed storage temperature range of the chemicals being stored. Hazardous chemical storage shall be in addition to minimum class size requirements specified in clauses (i) and (ii) of this subparagraph.

(iv) Each school science laboratory, science classroom, science laboratory/classroom, science preparatory room, and chemical storage room shall include the following provisions.

(I) A built-in fume hood shall be provided in each high school level chemistry or advanced placement chemistry laboratory or laboratory/classroom. A built-in fume hood should also be provided in each high school level integrated physics and chemistry laboratory or laboratory/classroom. The exhaust shall be vented to the outside above the roof and away from air vents except for filtered hoods. Filtered fume hoods may be used in all science laboratories. The filter must be universal and compatible with all chemicals being used. A secondary (safety) filter must be provided and identical to the primary filter type. The face velocity should be between 60-120 linear feet per minute when the sash opening is at its normal working opening. The florescent light should be vapor proof. The filtered fume hood may be adjustable for height. The fume hood superstructure and sash shall be constructed according to the ducted chemical fume hood standard and provided with the specified services (air/vacuum/gas/water/electricity).

(II) A built-in eye/face wash that can wash both eyes simultaneously shall be provided in each room where hazardous chemicals are used by instructors and/or students. The eye/face wash shall comply with the ANSI Standards for Shower and Eyewash Equipment (Z358.1). The tepid water required by ANSI Z358.1 is not required to come from a heated source; however, school districts that commonly experience lengthy periods of extremely cold temperatures during the winter season should consider a tepid water system with a heated source. The eye/face wash must be accessible within 10 seconds for each person in the room. A method of draining built-in eye/face

washes must be provided so the built-in eye/face wash can be flushed weekly.

(III) A built-in safety shower shall be provided in each high school level chemistry or advanced placement chemistry laboratory or laboratory/classroom. A built-in safety shower should also be provided in each high school level integrated physics and chemistry laboratory or laboratory/classroom. The safety shower shall comply with the ANSI Standards for Shower and Eyewash Equipment (Z358.1). The tepid water required by ANSI Z358.1 is not required to come from a heated source; however, school districts that commonly experience lengthy periods of extremely cold temperatures during the winter season should consider a tepid water system with a heated source. The safety shower must be accessible within 10 seconds for each person in the room. A floor drain must be provided for all safety showers.

(IV) Ventilation systems serving science rooms shall be designed and constructed so that under normal operation the return air from the science rooms is not recirculated into non-science areas. In the chemical storage rooms, a ventilation system shall exhaust the air to the outside, and shall not be recirculated back into the space.

(V) An exhaust fan that is controlled by the instructor shall be provided in all rooms where hazardous or vaporous chemicals are to be used or stored. The exhaust fan shall be of sufficient size to exhaust the total volume of air in the room within 15 minutes. The exhaust shall be vented to the outside above the roof and away from air vents.

(VI) A minimum of 6 linear feet of total horizontal workspace, such as lab stations, lab tables, countertops, desktops, or some combination of these, shall be provided for each student in each middle school and high school science laboratory and science laboratory/classroom.

(VII) If electricity, gas, and/or water are provided in student areas, emergency shut-off controls shall be provided for each in a location accessible to the instructor but not easily accessible to students.

(VIII) Science laboratories and science laboratory/classrooms shall be designed so that there is a clear line of vision that enables teachers to adequately supervise the students.

(IX) Each science room shall have a minimum of 10 square feet per student for preparation and equipment/materials storage (240 square feet for each 24 students in the laboratory or science classroom).

(v) Special education classrooms shall be large enough to accommodate the individualized education program (IEP) of students assigned to the classroom. Generally, a minimum of 56 square feet per student is large enough to meet this requirement, but districts must carefully review the furniture, adaptive equipment, and IEP needs of children with disabilities to ensure there is adequate physical space.

(vi) Specialized classrooms not otherwise identified within these standards shall at a minimum comply with the requirements specified in subparagraph (B) of this paragraph.

(vii) Compliance with the standards specified in clauses (iii) and (iv) of this subparagraph will be evaluated based on the average class size in those classrooms.

(D) Gymnasiums. Primary gymnasiums or physical education space, if required by the district's educational program, shall have a minimum of 3,000 square feet at the elementary school level; 4,800 square feet at the middle school level; and 7,500 square feet at the high school level.

(E) Library media centers. A school district shall consider the School Library Programs: Standards and Guidelines for Texas as adopted under Texas Education Code, §33.021, when developing, implementing, or expanding library services. The following requirements apply.

(i) Library media centers for campuses with a planned student capacity of 100 or less shall be a minimum of 1,400 square feet.

(ii) Library media centers for campuses with a planned student capacity of 101 to 500 shall be a minimum of 1,400 square feet plus an additional 4 square feet for each student in excess of 100.

(iii) Library media centers for campuses with a planned student capacity of 501 to 2,000 shall be a minimum of 3,000 square feet plus an additional 3 square feet for each student in excess of 500.

(iv) Library media centers for campuses with a planned student capacity of 2,001 or more shall be a minimum of 7,500 square feet plus an additional 2 square feet for each student in excess of 2,000.

(v) A school district that plans to locate more than 12 student computers in a library media center shall add 25 square feet of space for each additional computer anticipated.

(vi) The space allotment within each library media center shall be based on a formula of 30% for the reading/instructional area and reference/independent study area, 45% for the stack area, circulation desk/area, and computer/online reference area, and 25% for necessary ancillary areas.

(vii) Windows shall be placed so that adequate wall and floor space remains to accommodate the shelving necessary for the library collection size established by the School Library Programs: Standards and Guidelines for Texas.

(viii) The reading/reference area function of a library media center may be dispersed throughout the facility outside the normal library media center boundaries.

(7) Other space requirements should be developed from school district design criteria as required to meet educational program needs.

(e) Educational adequacy. A proposed new school facility or major space renovation of an existing school facility meets the conditions of educational adequacy if the design of the proposed project is based on the requirements of the school district's educational program, the educational specifications, and the student population that it serves.

(f) Construction quality.

(1) Districts with existing building codes.

(A) A school district located in an area that has adopted local construction codes shall comply with those codes (including building, fire, plumbing, mechanical, fuel gas, energy conservation, and electrical codes). The school district is not required to seek additional plan review of school facilities projects other than what is required by the local building authority. If the local building authority does not require a plan review, then a qualified, independent third party, not employed by the design architect or engineer, shall review the plans and specifications for compliance with the requirements of the adopted building code. The plan review shall examine compliance

conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design. The review shall be conducted prior to the commencement of construction and must be conducted by a qualified building code consultant or a third party architect or engineer. A qualified building code consultant is a person who maintains, as a minimum, a current certification from the ICC. Associated fees shall be the responsibility of the school district. The reviewer shall prepare a summary list of any conditions not in conformance with the provisions of the adopted building code and is required to send a copy to the school district, design architect, or engineer. The design architect or engineer shall revise the plans and specifications as necessary and certify code compliance to the district. The reviewer, in his or her reasonable judgment and with the approval of the local building authority, may allow a limited number of variances from the codes if such variances do not negatively affect the quality or safety of the facility. Any disputes shall be a matter for contract resolution.

(B) For school facilities projects subject to these standards, and where not otherwise required by local code, fire alarm systems shall be provided. Fire alarm systems shall be designed and installed in accordance with applicable portions of the latest edition of the IBC and IFC.

(C) As part of their school facilities projects and where not otherwise required by local code, school districts shall provide automatic sprinkler systems or other fire suppression systems for fire protection, fire suppression, and life safety. In absence of a local code, each automatic sprinkler system shall be installed in accordance with the latest edition of the IBC and IFC.

(D) If the local building authority does not conduct reviews and inspections during the course of construction of the facility, then a qualified, independent third party, not employed by the design architect or engineer or contractor, should perform a reasonable number of reviews and inspections during the course of construction for compliance with the requirements of the adopted building code. The reviews and inspections should examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design. A qualified code inspector is a person who maintains, as a minimum, a current certification from the ICC as a combination commercial inspector and commercial energy inspector.

(E) All new educational facilities shall be designed in a manner that controls visitor access during the school day.

(2) Districts without existing building codes.

(A) A school district located in an area that has not adopted local building codes shall adopt and use the building code and related fire, plumbing, mechanical, fuel gas, and energy conservation codes from the latest edition of the family of International Codes as published by the ICC and the National Electric Code as published by the NFPA. As an alternative, a school district may adopt the building code and related fire, plumbing, mechanical, fuel gas, and energy conservation codes as adopted by a nearby municipality or county. A qualified, independent third party, not employed by the design architect or engineer, shall review the plans and specifications for compliance with the requirements of the adopted building code. The plan review shall examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design. The review shall be conducted prior to the commencement of construction and must be conducted by a qualified building code consultant or a third party architect or engineer. A qualified building code consultant is a person who maintains, as a minimum, a current certification from the ICC. Associated fees shall be the responsibility of the school district. The reviewer shall prepare a summary list of any conditions not in conformance with the provisions of the adopted building code and is required to send a copy to the school district, design architect, or engineer. The design architect or engineer shall revise the plans and specifications as necessary and certify code compliance to the district. The reviewer, in his or her reasonable judgment, may allow a limited number of variances from the codes if such variances do not negatively affect the quality or safety of the facility. Any disputes shall be a matter for contract resolution.

(B) For school facilities projects subject to these standards, fire alarm systems shall be provided. Fire alarm systems shall be designed and installed in accordance with applicable portions of the latest edition of the IBC and IFC.

(C) As part of their school facilities projects, school districts shall provide automatic sprinkler systems or other fire prevention systems for fire protection, fire suppression, and life safety. Each automatic sprinkler system shall be installed in accordance with the latest edition of the IBC and IFC.

(D) A qualified, independent third party, not employed by the design architect or engineer or contractor, should perform a reasonable number of reviews and inspections during the course of construction of the facility for compliance with the requirements of the adopted building code. The reviews and inspections should examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design. A qualified code inspector is a person who maintains, as a minimum, a current certification from the ICC as a combination commercial inspector and commercial energy inspector.

(E) All new educational facilities shall be designed in a manner that controls visitor access during the school day.

(3) Special provisions for portable, modular buildings. Any portable, modular building capable of being relocated that is purchased or leased for use as a school facility by a school district, whether that building is manufactured off-site or constructed on-site, must comply with all provisions of this section. The following additional provisions shall apply to any portable, modular building that is purchased or leased for use as a school facility by a school district.

(A) A school district located in an area that has adopted local construction codes shall have the portable, modular building, including the construction of the foundation system and the erection and installation of the building on the foundation, inspected by the local building authority for compliance with the mandatory building codes or approved designs, plans, and specifications. The school district is not required to seek additional inspection of the portable, modular building other than what is required by the local building authority. If the local building authority does not perform inspections, then a qualified, independent third party, not employed by the design architect, engineer, contractor, or manufacturer, shall inspect the facility, including the construction of the foundation system and the erection and installation of the facility on the foundation, for compliance with the mandatory building codes or approved designs, plans, and specifications. The inspections shall be performed within 30 days of the completion of the construction, erection, and installation of the facility on the site, and the school district shall not occupy or use the facility until the independent third party makes a final determination that the facility is in compliance with all provisions of this section. For a manufactured portable, modular building that is an industrialized building as defined by the Texas Occupations Code, §1202.003, the factory inspection performed under the oversight of the Texas Department of Licensing and Regulation shall suffice to determine compliance of the building envelope with

the mandatory building codes or approved designs, plans, and specifications in lieu of an inspection by the local building authority or an independent third party for a portable, modular building constructed on or after January 1, 1986; however, an inspection of the construction of the foundation system and the erection and installation of the portable, modular building on the foundation shall still be performed.

(B) A school district located in an area that has not adopted local building codes shall have the portable, modular building, including the construction of the foundation system and the erection and installation of the building on the foundation, inspected by a qualified, independent third party, not employed by the design architect, engineer, contractor, or manufacturer, for compliance with the mandatory building codes or approved designs, plans, and specifications. The inspections shall be performed within 30 days of the completion of the construction, erection, and installation of the facility on the site, and the school district shall not occupy or use the facility until the independent third party makes a final determination that the facility is in compliance with all provisions of this section. For a manufactured portable, modular building that is an industrialized building as defined by the Texas Occupations Code, §1202.003, the factory inspection performed under the oversight of the Texas Department of Licensing and Regulation shall suffice to determine compliance of the building envelope with the mandatory building codes or approved designs, plans, and specifications in lieu of an inspection by an independent third party for a portable, modular building constructed on or after January 1, 1986; however, an inspection of the construction of the foundation system and the erection and installation of the portable, modular building on the foundation shall still be performed.

(C) A qualified, independent third party inspector is a person who maintains, as a minimum, a current certification from the ICC as a combination commercial inspector and commercial energy inspector.

(D) Portable, modular buildings shall comply with space, minimum square foot, and design requirements specified in subsection (d) of this section.

(E) All new portable, modular buildings shall have an accessible toilet or be located on the site to be within 500 feet of an accessible toilet within the main school building.

(4) Other provisions.

(A) For school facilities projects subject to these standards, an adequate technology, electrical, and communications infrastructure shall be provided. To ensure the adequacy of the infrastructure, the school district and the architect or engineer shall seek the input of the school district staff, including, but not limited to, the technology director, the library director, the program directors, the maintenance director, and the campus staff, in the planning and design of the infrastructure.

(B) As part of their school facilities projects, school districts should consider the use of designs, methods, and materials that will reduce the potential for indoor air quality problems. School districts should consult with a qualified indoor air quality specialist during the design process to ensure that the potential for indoor air quality problems after construction and occupancy of a facility is minimized. School districts should use the "Indoor Air Quality Design Tools for Schools" program administered by the U.S. Environmental Protection Agency.

(C) As part of their school facilities projects, school districts should consider the use of sustainable school designs. A sustainable design is a design that minimizes a facility's impact on the environment through energy and resource efficiency.

(D) School district facilities shall comply with the Texas accessibility standards as promulgated under the Texas Government Code, Chapter 469, Elimination of Architectural Barriers, as prepared and administered by the Texas Department of Licensing and Regulation.

(E) School district facilities shall comply with the provisions of the Americans with Disabilities Act of 1990 (Title I and Title II).

(F) School districts must ensure that facilities are constructed to enable compliance with multi-hazard emergency operations plans adopted under TEC, §37.108.

(G) School district facilities shall comply with all other local, state, and federal requirements as 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.

Filed with the Office of the Secretary of State on September 12, 2016.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

The Texas Board of Architectural Examiners (Board) proposes the amendment of Part 1, Title 22 §1.5, pertaining to Terms Defined Herein and §1.148, pertaining to Prevention of Unauthorized Practice; and the repeal of §1.24, pertaining to Fees.

In general, the purpose of the proposed rules is to implement changes resulting from the Board's review of 22 Tex. Admin. Code Chapter 1 under Texas Government Code, §2001.039. The notice of intention to review Chapter 1 was published in the July 8, 2016 issue of the *Texas Register* (41 TexReg 5077). The agency did not receive any comments on the notice of intention to review.

Amendment of §1.5

The Board proposes to amend terms and definitions contained in §1.5. Under §1.5(2), the Board has defined the term "actual signature." However, the term "actual signature" does not appear in the Board's rules. Rather, the Board's rules make reference to the term "signature." These references mostly occur in Subchapter F of the Board's rules, relating to the Architect's Seal. For example, under §1.103, prior to issuing a construction document, an architect is required to affix to the document the architect's seal and signature across the face of the seal's image or directly under or adjacent to the seal's image, and the date of signing. Because the Board's rules do not include the term "actual signature," the Board proposes to amend the rule to define

the term "signature" with the same definition as previously used for "actual signature."

The Board proposes to amend the definition for "Architects' Registration Law," which is the Board's common title for Occupations Code Chapter 1051, under §1.5(9). In defining this term, the rule refers to Chapter 1051, as well as Article 249a, Vernon's Texas Civil Statutes. Since the citation to Article 249a is obsolete following the 2003 codification of Occupations Code 1051, the Board proposes eliminating this reference in the definition.

The Board proposes to amend the definition for "Architectural Barriers Act" under §1.5(10). The Architectural Barriers Act is contained in Government Code Chapter 469, and requires certain buildings and facilities to be accessible to and functional for persons with disabilities. In defining "Architectural Barriers Act," the rule refers to Chapter 469, as well as Article 9102, Vernon's Texas Civil Statutes. Since the citation to Article 9102 is obsolete following the 2003 codification of the Architectural Barriers Act, the Board proposes eliminating this reference in the definition.

The Board proposes to delete the term and definition for "authorship" under §1.5(14). The Board rules do not contain any references to the terms "authorship" or "author." Therefore, it is unnecessary to define this term.

The Board proposes to correct a typographical error under §1.5(19). This rule provides a definition for the term "EPH." This is a drafting mistake, and the correct term should be "CEPH," an acronym for continuing education program hour(s).

The Board proposes to delete the term and definition for "e-mail directory" under §1.5(27). The Board rules do not contain any references to the term "e-mail directory." Therefore, it is unnecessary to define this term.

Due the deletion of the definitions for "authorship" and "e-mail directory," and the alphabetical re-ordering of the definition for "signature," the Board proposes to renumber §1.5 accordingly.

Repeal of §1.24

The Board proposes to repeal §1.24. This rule states that the Board shall establish a schedule of fees, and that the schedule shall be published and copies made available at the Board's office. This rule was adopted at a time, prior to 2005, when the Board did not adopt a fee schedule by rule, and rather made copies of the fee schedule available in the Board's offices. Under current practices, in which the fee schedule is adopted and published under §7.10, this rule is inaccurate and extraneous.

Amendment of §1.148

The Board proposes to amend §1.148 to correct a reference to obsolete law. Under §1.148, "an Architect who fails to renew his/her certificate of registration prior to its annual expiration date shall not use the title 'architect' and shall not 'practice architecture' as defined by Section 10 of the Act until after the Architect's certificate of registration has been properly renewed." The reference to Section 10 of the Act refers to the Board's laws prior to codification of Occupations Code 1051 in 2003. Section 10 previously defined the practice of architecture, which is now defined under Occupations Code Sec. 1051.001(7). Because the reference to Subsection 10 in §1.148 is obsolete, the Board proposes replace it with the correct citation to §1051.001(7).

FISCAL NOTE

Lance Brenton, General Counsel, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, the amendment will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

PUBLIC BENEFIT/COST OF COMPLIANCE

For the first five-year period the amended rule is in effect, the expected public benefit is to provide greater clarity within the Board's rules by deleting and amending obsolete rules and references to be more consistent with current laws and practices.

There is no anticipated economic cost to persons who are required to comply with the proposed new rule. The amendment to the rule will have no negative fiscal impact on small or micro-business. Therefore, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

PUBLIC COMMENT

Comments may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337. Comments must be received by November 1, 2016.

SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §1.5

STATUTORY AUTHORITY

The proposed amendment to §1.5 is proposed under Sections 1051.202, 1051.356, 1051.654, and 1051.752(2) of the Texas Occupations Code.

Section 1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Section 1051.356 directs the Board to administer continuing education programs for certificate holders, which must be completed in order to retain certification.

Section 1051.654 requires the Board to prescribe and approve the seal to be used by an architect. Pursuant to this authority, the Board has adopted rules which require an architect to seal certain documents, and to include his or her signature with the seal. For this reason, the Board proposes to adopt an amendment to the definition of the term "signature."

Section 1051.752(2) authorizes the Board to take disciplinary action against a person who fails to provide or to timely provide to the Texas Department of Licensing and Regulation any document designated by Chapter 469, Government Code, as a document the person is required to provide to the department. The common name for Chapter 469 is the Architectural Barriers Act, the definition of which the Board proposes to amend in this rulemaking action.

CROSS REFERENCE TO STATUTE

The proposed amendments to these rules do not affect any other statutes.

§§1.5. Terms Defined Herein.

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

(1) The Act--The Architects' Registration Law.

[~~(2) Actual Signature--A personal signature of the individual whose name is signed or an authorized copy of such signature.~~]

(2) [~~(3)~~] Administrative Procedure Act (APA)--Texas Government Code §§2001.001 et seq.

(3) [~~(4)~~] APA--Administrative Procedure Act.

(4) [~~(5)~~] Applicant--An individual who has submitted an application for registration or reinstatement but has not yet completed the registration or reinstatement process.

(5) [~~(6)~~] Architect--An individual who holds a valid Texas architectural registration certificate granted by the Board.

(6) [~~(7)~~] Architect Registration Examination (ARE)--The standardized test that a Candidate must pass in order to obtain a valid Texas architectural registration certificate.

(7) [~~(8)~~] Architect Registration Examination Financial Assistance Fund (AREFAF)--A program administered by the Board which provides monetary awards to Candidates and newly registered Architects who meet the program's criteria.

(8) [~~(9)~~] Architects' Registration Law--[~~Article 249a, Vernon's Texas Civil Statutes, and~~] Chapter 1051, Texas Occupations Code.

(9) [~~(10)~~] Architectural Barriers Act--[~~Article 9102, Vernon's Texas Civil Statutes and~~] Texas Government Code, Chapter 469.

(10) [~~(11)~~] Architectural Intern--An individual enrolled in the Intern Development Program (IDP).

(11) [~~(12)~~] ARE--Architect Registration Examination.

(12) [~~(13)~~] AREFAF--Architect Registration Examination Financial Assistance Fund.

~~[(14) Authorship--The state of having personally created something.]~~

(13) [~~(15)~~] Barrier-Free Design--The design of a building or a facility or the design of an alteration of a building or a facility which complies with the Texas Accessibility Standards, the Americans with Disabilities Act, the Fair Housing Accessibility Guidelines, or similarly accepted standards for accessible design.

(14) [~~(16)~~] Board--Texas Board of Architectural Examiners.

(15) [~~(17)~~] Cancel, Cancellation, or Cancelled--The termination of a Texas architectural registration certificate by operation of law two years after it expires without renewal by the certificate-holder.

(16) [~~(18)~~] Candidate--An Applicant approved by the Board to take the ARE.

(17) [~~(19)~~] CEPH--Continuing Education Program Hour(s).

(18) [~~(20)~~] Chair--The member of the Board who serves as the Board's presiding officer.

(19) [~~(21)~~] Construction Documents--Drawings; specifications; and addenda, change orders, construction change directives, and other Supplemental Documents prepared for the purpose(s) of Regulatory Approval, permitting, or construction.

(20) [~~(22)~~] Consultant--An individual retained by an Architect who prepares or assists in the preparation of technical design documents issued by the Architect for use in connection with the Architect's Construction Documents.

(21) [~~(23)~~] Contested Case--A proceeding, including a licensing proceeding, in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing.

(22) [~~(24)~~] Continuing Education Program Hour (CEPH)--At least fifty (50) minutes of time spent in an activity meeting the Board's continuing education requirements.

(23) [~~(25)~~] Council Certification--Certification granted by NCARB to architects who have satisfied certain standards related to architectural education, training, and examination.

(24) [~~(26)~~] Delinquent--A registration status signifying that an Architect:

(A) has failed to remit the applicable renewal fee to the Board; and

(B) is no longer authorized to Practice Architecture in Texas or use any of the terms restricted by the Architects' Registration Law.

~~[(27) E-mail Directory--A listing of e-mail addresses:]~~

~~[(A) used to advertise architectural services; and]~~

~~[(B) posted on the Internet under circumstances where the Architects included in the list have control over the information included in the list.]~~

(25) [~~(28)~~] Emeritus Architect (or Architect Emeritus)--An honorary title that may be used by an Architect who has retired from the Practice of Architecture in Texas pursuant to Texas Occupations Code, §1051.357.

(26) [~~(29)~~] Energy-Efficient Design--The design of a project and the specification of materials to minimize the consumption of energy in the use of the project. The term includes energy efficiency strategies by design as well as the incorporation of alternative energy systems.

(27) [~~(30)~~] Feasibility Study--A report of a detailed investigation and analysis conducted to determine the advisability of a proposed architectural project from a technical architectural standpoint.

(28) [~~(31)~~] Good Standing--

(A) a registration status signifying that an Architect is not delinquent in the payment of any fees owed to the Board; or

(B) an application status signifying that an Applicant or Candidate is not delinquent in the payment of any fees owed to the Board, is not the subject of a pending TBAE enforcement proceeding, and has not been the subject of formal disciplinary action by an architectural registration board that would provide a ground for the denial of the application for architectural registration in Texas.

(29) [~~(32)~~] Governmental Entity--A Texas state agency or department; a district, authority, county, municipality, or other political subdivision of Texas; or a publicly owned Texas utility.

(30) [~~(33)~~] Governmental Jurisdiction--A governmental authority such as a state, territory, or country beyond the boundaries of Texas.

(31) [~~(34)~~] IDP--The Intern Development Program as administered by NCARB.

(32) [~~(35)~~] Inactive--A registration status signifying that an Architect may not Practice Architecture in the State of Texas.

(33) [~~(36)~~] Intern Development Program (IDP)--A comprehensive internship program established, interpreted, and enforced by NCARB.

(34) [~~(37)~~] Institutional Residential Facility--A building intended for occupancy on a 24-hour basis by persons who are receiving custodial care from the proprietors or operators of the building. Hospitals, dormitories, nursing homes and other assisted living facilities, and correctional facilities are examples of buildings that may be Institutional Residential Facilities.

(35) [~~(38)~~] Licensed--Registered.

(36) [~~(39)~~] Member Board--An architectural registration board that is part of the nonprofit federation of architectural registration boards known as NCARB.

(37) [~~(40)~~] NAAB--National Architectural Accrediting Board.

(38) [~~(41)~~] National Architectural Accrediting Board (NAAB)--An agency that accredits architectural degree programs in the United States.

(39) [~~(42)~~] National Council of Architectural Registration Boards (NCARB)--A nonprofit federation of architectural registration boards from fifty-five (55) states and territories of the United States.

(40) [~~(43)~~] NCARB--National Council of Architectural Registration Boards.

(41) [~~(44)~~] Nonregistrant--An individual who is not an Architect.

(42) [~~(45)~~] Practice Architecture--Perform or do or offer or attempt to do or perform any service, work, act, or thing within the scope of the Practice of Architecture.

(43) [~~(46)~~] Practicing Architecture--Performing or doing or offering or attempting to do or perform any service, work, act, or thing within the scope of the Practice of Architecture.

(44) [~~(47)~~] Practice of Architecture--A service or creative work applying the art and science of developing design concepts, planning for functional relationships and intended uses, and establishing the form, appearance, aesthetics, and construction details for the construction, enlargement, or alteration of a building or environs intended for human use or occupancy, the proper application of which requires education, training, and experience in those matters.

(A) The term includes:

(i) establishing and documenting the form, aesthetics, materials, and construction technology for a building, group of buildings, or environs intended to be constructed or altered;

(ii) preparing or supervising and controlling the preparation of the architectural plans and specifications that include all integrated building systems and construction details, unless otherwise permitted under Texas Occupations Code, §1051.606(a)(4); and

(iii) observing the construction, modification, or alteration of work to evaluate conformance with architectural plans and specifications described in clause (ii) of this subparagraph for any building, group of buildings, or environs requiring an architect.

(B) The term "practice of architecture" also includes the following activities which, pursuant to Texas Occupations Code §1051.701(a), may be performed by a person who is not registered as an Architect:

(i) programming for construction projects, including identification of economic, legal, and natural constraints and determination of the scope and spatial relationship of functional elements;

(ii) recommending and overseeing appropriate construction project delivery systems;

(iii) consulting, investigating, and analyzing the design, form, aesthetics, materials, and construction technology used for the construction, enlargement, or alteration of a building or environs and providing expert opinion and testimony as necessary;

(iv) research to expand the knowledge base of the profession of architecture, including publishing or presenting findings in professional forums; and

(v) teaching, administering, and developing pedagogical theory in academic settings offering architectural education.

(45) [~~(48)~~] Principal--An architect who is responsible, either alone or with other architects, for an organization's Practice of Architecture.

(46) [~~(49)~~] Prototypical--From or of an architectural design intentionally created not only to establish the architectural parameters of a building or facility to be constructed but also to serve as a functional model on which future variations of the basic architectural design would be based for use in additional locations.

(47) [~~(50)~~] Public Entity--A state, a city, a county, a city and county, a district, a department or agency of state or local government which has official or quasi-official status, an agency established by state or local government though not a department thereof but subject to some governmental control, or any other political subdivision or public corporation.

(48) [~~(51)~~] Registered--Licensed.

(49) [~~(52)~~] Registrant--Architect.

(50) [~~(53)~~] Regulatory Approval--The approval of Construction Documents by the applicable Governmental Entity after a review of the architectural content of the Construction Documents as a prerequisite to construction or occupation of a building or a facility.

(51) [~~(54)~~] Reinstatement--The procedure through which a Surrendered or revoked Texas architectural registration certificate is restored.

(52) [~~(55)~~] Renewal--The procedure through which an Architect pays a periodic fee so that the Architect's registration certificate will continue to be effective.

(53) [~~(56)~~] Responsible Charge--That degree of control over and detailed knowledge of the content of technical submissions during their preparation as is ordinarily exercised by registered architects applying the applicable architectural standard of care.

(54) [~~(57)~~] Revocation or Revoked--The termination of an architectural registration certificate by the Board.

(55) [~~(58)~~] Rules and Regulations of the Board--22 Texas Administrative Code §§1.1 et seq.

(56) [~~(59)~~] Rules of Procedure of SOAH--1 Texas Administrative Code §§155.1 et seq.

(57) [~~(60)~~] Secretary-Treasurer--The member of the Board responsible for signing the official copy of the minutes of each Board meeting and maintaining the record of Board members' attendance at Board meetings.

(58) Signature--A personal signature of the individual whose name is signed or an authorized copy of such signature.

(59) [~~(61)~~] SOAH--State Office of Administrative Hearings.

(60) [~~(62)~~] Sole Practitioner--An Architect who is the only design professional to offer or render architectural services on behalf of a business entity.

(61) [~~(63)~~] State Office of Administrative Hearings (SOAH)--A Governmental Entity created to serve as an independent forum for the conduct of adjudicative hearings involving the executive branch of Texas government.

(62) [~~(64)~~] Supervision and Control--The amount of oversight by an architect overseeing the work of another whereby:

(A) the architect and the individual performing the work can document frequent and detailed communication with one another and the architect has both control over and detailed professional knowledge of the work; or

(B) the architect is in Responsible Charge of the work and the individual performing the work is employed by the architect or by the architect's employer.

(63) [~~(65)~~] Supplemental Document--A document that modifies or adds to the technical architectural content of an existing Construction Document.

(64) [~~(66)~~] Surrender--The act of relinquishing a Texas architectural registration certificate along with all privileges associated with the certificate.

(65) [~~(67)~~] Sustainable Design--An integrative approach to the process of design which seeks to avoid depletion of energy, water, and raw material resources; prevent environmental degradation caused by facility and infrastructure developments during their implementation and over their life cycle; and create environments that are livable and promote health, safety and well-being. Sustainability is the concept of meeting present needs without compromising the ability of future generations to meet their own needs.

(66) [~~(68)~~] TBAE--Texas Board of Architectural Examiners.

(67) [~~(69)~~] TDLR--Texas Department of Licensing and Regulation.

(68) [~~(70)~~] Texas Department of Licensing and Regulation (TDLR)--A Texas state agency responsible for the implementation and enforcement of the Texas Architectural Barriers Act.

(69) [~~(71)~~] Texas Guaranteed Student Loan Corporation (TGSLC)--A public, nonprofit corporation that administers the Federal Family Education Loan Program.

(70) [~~(72)~~] TGSLC--Texas Guaranteed Student Loan Corporation.

(71) [~~(73)~~] Vice-Chair--The member of the Board who serves as the assistant presiding officer and, in the absence of the Chair, serves as the Board's presiding officer. If necessary, the Vice-Chair succeeds the Chair until a new Chair is appointed.

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, 2016.

TRD-201604727

Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 305-8519

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SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §1.24

STATUTORY AUTHORITY

The repeal of §1.24 is proposed under Sections 1051.202, 1051.302, 1051.305, 1051.355, 1051.357, 1051.651, and 1051.705 of the Texas Occupations Code. The rule describes the processes the Board uses in establishing a fee schedule. The cited statutes provide the Board with obligations and authorizations with respect to collection of fees, as follows:

Section 1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Section 1051.305 authorizes the Board to set a fee in a reasonable and necessary amount to cover the cost of processing and investigating an application for registration by reciprocity.

Section 1051.355 requires the Board to prescribe a renewal fee for a registrant on inactive status.

Section 1051.357 requires the Board to set a renewal fee for registrants on emeritus status in an amount reasonable and necessary to recover the costs to administer this section.

Section 1051.651 authorizes the Board to set a fee for a board action involving an administrative expense in an amount that is reasonable and necessary to cover the cost of administering Chapter 1051, and requires the Board to set the renewal fee for architect registrants.

Section 1051.705 requires the Board to set an examination fee in an amount reasonable and necessary to cover the cost of the examination for architect registration, and under §1051.302, the board may delegate the collection of any examination fee prescribed by the board to the person who conducts the examination.

§1.24. Fees.

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, 2016.

TRD-201604730
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 305-8519

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SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §1.148

STATUTORY AUTHORITY

The proposed amendment to §1.148 is proposed under Sections 1051.202 and 1051.351.

Section 1051.202, authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Under Section 1051.351, a person whose certificate of registration has expired is prohibited from engaging activities that require registration until the certificate of registration has been renewed. To implement this provision, the Board has adopted §1.148(c), and the Board seeks to amend the rule to delete an obsolete legal reference.

§1.148. Prevention of Unauthorized Practice.

(a) An Architect shall not practice or offer to practice architecture in any governmental jurisdiction in which to do so would be in violation of a law regulating the practice of architecture in that jurisdiction.

(b) The revocation, suspension, refusal to renew, or denial of a registration to practice architecture in another jurisdiction shall be sufficient cause for the revocation, suspension, refusal to renew, or denial of a registration to practice architecture in the State of Texas.

(c) An Architect who fails to renew his/her certificate of registration prior to its annual expiration date shall not use the title "architect" and shall not "practice architecture" as defined by §1051.001 of the Texas Occupations Code [~~Section 10 of the Act~~] until after the Architect's certificate of registration has been properly renewed.

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, 2016.

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Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 305-8519

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CHAPTER 3. LANDSCAPE ARCHITECTS

The Texas Board of Architectural Examiners (Board) proposes the amendment of Part 1, Title 22 §3.5, pertaining to Terms Defined Herein and the repeal of §3.24, pertaining to Fees.

In general, the purpose of the proposed rules is to implement changes resulting from the Board's review of 22 Tex. Admin. Code Chapter 3 under Texas Government Code, §2001.039. The notice of intention to review Chapter 3 was published in the *Texas Register* on July 8, 2016 (41 TexReg 5077). The agency did not receive any comments on the notice of intention to review.

Amendment of §3.5

The Board proposes to amend terms and definitions contained in §3.5. Under §3.5(2), the Board has defined the term "actual signature." However, the term "actual signature" does not appear in the Board's rules. Rather, the Board's rules make reference to the term "signature." These references mostly occur in Subchapter F of the Board's rules, relating to the Landscape Architect's Seal. For example, under §3.103, prior to issuing a construction document, a landscape architect is required to affix to the document the landscape architect's seal and signature across the face of the seal's image or directly under or adjacent to the seal's image, and the date of signing. Because the Board's rules do not include the term "actual signature," the Board proposes to amend the rule to define the term "signature" with the definition previously used for "actual signature."

The Board proposes to amend the definition for "Landscape Architects' Registration Law," which is the Board's common title for Occupations Code Chapter 1052, under §3.5(33). In defining this term, the rule refers to Chapter 1052, as well as Article 249c, Vernon's Texas Civil Statutes. Since the citation to Article 249c is obsolete following the 2003 codification of Occupations Code 1052, the Board proposes eliminating this reference in the definition.

The Board proposes to amend the definition for "Architectural Barriers Act" under §3.5(6). The Architectural Barriers Act is contained in Government Code Chapter 469, and requires certain buildings and facilities to be accessible to and functional for persons with disabilities. In defining "Architectural Barriers Act," the rule refers to Chapter 469, as well as Article 9102, Vernon's Texas Civil Statutes. Since the citation to Article 9102 is obsolete following the 2003 codification of the Architectural Barriers Act, the Board proposes eliminating this reference in the definition.

The Board proposes to delete the term and definition for "authorship" under §3.5(7). The Board rules do not contain any references to the terms "authorship" or "author." Therefore, it is unnecessary to define this term.

The Board proposes to delete the term and definition for "e-mail directory" under §3.5(22). The Board rules do not contain any references to the term "e-mail directory." Therefore, it is unnecessary to define this term.

Due the deletion of the definitions for "authorship" and "e-mail directory," and the alphabetical re-ordering of the definition for "signature," the Board proposes to renumber §3.5 accordingly.

Repeal of §3.24

The Board proposes to repeal §3.24. This rule states that the Board shall establish a schedule of fees, and that the schedule shall be published and copies made available at the Board's office. This rule was adopted at a time, prior to 2005, when the Board did not adopt a fee schedule by rule, and rather made copies of the fee schedule available in the Board's offices. Under current practices, in which the fee schedule is adopted and published under §7.10, this rule is inaccurate and extraneous.

FISCAL NOTE

Lance Brenton, General Counsel, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, the amendments will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

PUBLIC BENEFIT/COST OF COMPLIANCE

For the first five-year period the amended rule is in effect, the expected public benefit is to provide greater clarity within the Board's rules by deleting and amending obsolete rules and references to be more consistent with current laws and practices.

There is no anticipated economic cost to persons who are required to comply with the proposed new rule. The amendment to the rule will have no negative fiscal impact on small or micro-business. Therefore, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

PUBLIC COMMENT

Comments may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337. Comments must be received by November 1, 2016.

SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §3.5

STATUTORY AUTHORITY

The amendment to §3.5 is proposed under Sections 1051.202, 1052.056, and 1052.252(8) of the Texas Occupations Code.

Section 1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Section 1052.056 requires the Board to prescribe and approve the seal to be used by a landscape architect. Pursuant to this authority, the Board has adopted rules which require a landscape architect to seal certain documents, and to include his or her signature with the seal. For this reason, the Board proposes to adopt an amendment to the definition of the term "signature."

Section 1052.252(8) authorizes the Board to take disciplinary action against a person who fails to provide or to timely provide to the Texas Department of Licensing and Regulation any document designated by Chapter 469, Government Code, as a document the person is required to provide to the department. The common name for Chapter 469 is the Architectural Barriers Act, the definition of which the Board proposes to amend in this rulemaking action.

CROSS REFERENCE TO STATUTE

The proposed amendments to these rules do not affect any other statutes.

§3.5. Terms Defined Herein.

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

(1) The Act--The Landscape Architects' Registration Law.

~~[(2) Actual Signature--A personal signature of the individual whose name is signed or an authorized copy of such signature.]~~

(2) [~~(3)~~] Administrative Procedure Act (APA)--Texas Government Code §§2001.001 et seq.

(3) [~~(4)~~] APA--Administrative Procedure Act.

(4) [~~(5)~~] Applicant--An individual who has submitted an application for registration or reinstatement but has not yet completed the registration or reinstatement process.

(5) [~~(6)~~] Architectural Barriers Act--[~~Article 9102, Vernon's Texas Civil Statutes and~~]Texas Government Code, Chapter 469.

~~[(7) Authorship--The state of having personally created something.]~~

(6) [~~(8)~~] Barrier-Free Design--The design of a facility or the design of an alteration of a facility which complies with the Texas Accessibility Standards, the Americans with Disabilities Act, the Fair Housing Accessibility Guidelines, or similarly accepted standards for accessible design.

(7) [~~(9)~~] Board--Texas Board of Architectural Examiners.

(8) [~~(10)~~] Cancel, Cancellation, or Cancelled--The termination of a Texas landscape architectural registration certificate by operation of law two years after it expires without renewal by the certificate-holder.

(9) [~~(11)~~] Candidate--An Applicant approved by the Board to take the LARE.

(10) [~~(12)~~] CEPH--Continuing Education Program Hour(s).

(11) [~~(13)~~] Chair--The member of the Board who serves as the Board's presiding officer.

(12) [~~(14)~~] CLARB--Council of Landscape Architectural Registration Boards.

(13) [~~(15)~~] Construction Documents--Drawings; specifications; and addenda, change orders, construction change directives, and other Supplemental Documents prepared for the purpose(s) of Regulatory Approval, permitting, or construction.

(14) [~~(16)~~] Consultant--An individual retained by a Landscape Architect who prepares or assists in the preparation of technical design documents issued by the Landscape Architect for use in connection with the Landscape Architect's Construction Documents.

(15) [~~(17)~~] Contested Case--A proceeding, including a licensing proceeding, in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing.

(16) [~~(18)~~] Continuing Education Program Hour (CEPH)--At least fifty (50) minutes of time spent in an activity meeting the Board's continuing education requirements.

(17) [~~(19)~~] Council of Landscape Architectural Registration Boards (CLARB)--An international nonprofit organization whose members are landscape architectural licensing boards of the U.S. states and Canadian provinces that license landscape architects.

(18) [~~(20)~~] Delinquent--A registration status signifying that a Landscape Architect:

(A) has failed to remit the applicable renewal fee to the Board; and

(B) is no longer authorized to practice Landscape Architecture in Texas or use any of the terms restricted by the Landscape Architects' Registration Law.

(19) [~~(21)~~] Direct Supervision--The amount of oversight by an individual overseeing the work of another whereby the supervisor and the individual being supervised work in close proximity to one another and the supervisor has both control over and detailed professional knowledge of the work prepared under his or her supervision.

~~(22) E-mail Directory--A listing of e-mail addresses:~~

~~(A) used to advertise landscape architectural services; and~~

~~(B) posted on the Internet under circumstances where the Landscape Architects included in the list have control over the information included in the list.~~

(20) [~~(23)~~] Emeritus Landscape Architect (or Landscape Architect Emeritus)--An honorary title that may be used by a Landscape Architect who has retired from the practice of Landscape Architecture in Texas pursuant to §1052.155 of the Texas Occupations Code.

(21) [~~(24)~~] Energy-Efficient Design--The design of a project and the specification of materials to minimize the consumption of energy in the use of the project. The term includes energy efficiency strategies by design as well as the incorporation of alternative energy systems.

(22) [~~(25)~~] Feasibility Study--A report of a detailed investigation and analysis conducted to determine the advisability of a proposed landscape architectural project from a technical landscape architectural standpoint.

(23) [~~(26)~~] Good Standing--

(A) a registration status signifying that a Landscape Architect is not delinquent in the payment of any fees owed to the Board; or

(B) an application status signifying that an Applicant or Candidate is not delinquent in the payment of any fees owed to the Board, is not the subject of a pending TBAE enforcement proceeding, and has not been the subject of formal disciplinary action by a landscape architectural registration board that would provide a ground for the denial of the application for landscape architectural registration in Texas.

(24) [~~(27)~~] Governmental Entity--A Texas state agency or department; a district, authority, county, municipality, or other political subdivision of Texas; or a publicly owned Texas utility.

(25) [~~(28)~~] Governmental Jurisdiction--A governmental authority such as a state, territory, or country beyond the boundaries of Texas.

(26) [~~(29)~~] Inactive--A registration status signifying that a Landscape Architect may not practice Landscape Architecture in the State of Texas.

(27) [~~(30)~~] LAAB--Landscape Architectural Accreditation Board.

(28) [~~(31)~~] Landscape Architect--An individual who holds a valid Texas landscape architectural registration certificate granted by the Board.

(29) [~~(32)~~] Landscape Architect Registration Examination (LARE)--The standardized test that a Candidate must pass in order to obtain a valid Texas landscape architectural registration certificate.

(30) [~~(33)~~] Landscape Architects' Registration Law--[~~Article 249c, Vernon's Texas Civil Statutes, and~~] Chapter 1052, Texas Occupations Code.

(31) [~~(34)~~] Landscape Architectural Accreditation Board (LAAB)--An agency that accredits landscape architectural degree programs in the United States.

(32) [~~(35)~~] Landscape Architectural Intern--An individual participating in an internship to complete the experiential requirements for landscape architectural registration in Texas.

(33) [~~(36)~~] Landscape Architecture--The art and science of landscape analysis, landscape planning, and landscape design, including the performance of professional services such as consultation, investigation, research, the preparation of general development and detailed site design plans, the preparation of studies, the preparation of specifications, and responsible supervision related to the development of landscape areas for:

(A) the planning, preservation, enhancement, and arrangement of land forms, natural systems, features, and plantings, including ground and water forms;

(B) the planning and design of vegetation, circulation, walks, and other landscape features to fulfill aesthetic and functional requirements;

(C) the formulation of graphic and written criteria to govern the planning and design of landscape construction development programs, including:

(i) the preparation, review, and analysis of master and site plans for landscape use and development;

(ii) the analysis of environmental, physical, and social considerations related to land use;

(iii) the preparation of drawings, construction documents, and specifications; and

(iv) construction observation;

(D) design coordination and review of technical submissions, plans, and construction documents prepared by individuals working under the direction of the Landscape Architect;

(E) the preparation of feasibility studies, statements of probable construction costs, and reports and site selection for landscape development and preservation;

(F) the integration, site analysis, and determination of the location of buildings, structures, and circulation and environmental systems;

(G) the analysis and design of:

(i) site landscape grading and drainage;

(ii) systems for landscape erosion and sediment control; and

(iii) pedestrian walkway systems;

(H) the planning and placement of uninhabitable landscape structures, plants, landscape lighting, and hard surface areas;

(I) the collaboration of Landscape Architects with other professionals in the design of roads, bridges, and structures regarding the functional, environmental, and aesthetic requirements of the areas in which they are to be placed; and

(J) field observation of landscape site construction, revegetation, and maintenance.

(34) [~~(37)~~] LARE--Landscape Architect Registration Examination.

(35) [~~(38)~~] Licensed--Registered.

(36) [~~(39)~~] Member Board--A landscape architectural registration board that is part of CLARB.

(37) [~~(40)~~] Nonregistrant--An individual who is not a Landscape Architect.

(38) [~~(41)~~] Principal--A Landscape Architect who is responsible, either alone or with other Landscape Architects, for an organization's practice of Landscape Architecture.

(39) [~~(42)~~] Prototypical--From or of a landscape architectural design intentionally created not only to establish the landscape architectural parameters of a project but also to serve as a functional model on which future variations of the basic landscape architectural design would be based for use in additional locations.

(40) [~~(43)~~] Registrant--Landscape Architect.

(41) [~~(44)~~] Regulatory Approval--The approval of Construction Documents by the applicable Governmental Entity after a review of the landscape architectural content of the Construction Documents as a prerequisite to construction of a project.

(42) [~~(45)~~] Reinstatement--The procedure through which a Surrendered or revoked Texas landscape architectural registration certificate is restored.

(43) [~~(46)~~] Renewal--The procedure through which a Landscape Architect pays a periodic fee so that the Landscape Architect's registration certificate will continue to be effective.

(44) [~~(47)~~] Responsible charge--That degree of control over and detailed knowledge of the content of technical submissions during their preparation as is ordinarily exercised by registered landscape architects applying the applicable landscape architectural standard of care.

(45) [~~(48)~~] Revocation or Revoked--The termination of a landscape architectural certificate by the Board.

(46) [~~(49)~~] Rules and Regulations of the Board--22 Texas Administrative Code §§3.1 et seq.

(47) [~~(50)~~] Rules of Procedure of SOAH--1 Texas Administrative Code §§155.1 et seq.

(48) [~~(51)~~] Secretary-Treasurer--The member of the Board responsible for signing the official copy of the minutes of each Board meeting and maintaining the record of Board members' attendance at Board meetings.

(49) Signature--A personal signature of the individual whose name is signed or an authorized copy of such signature.

(50) [~~(52)~~] SOAH--State Office of Administrative Hearings.

(51) [~~(53)~~] Sole Practitioner--A Landscape Architect who is the only design professional to offer or render landscape architectural services on behalf of a business entity.

(52) [~~(54)~~] State Office of Administrative Hearings (SOAH)--A Governmental Entity created to serve as an independent forum for the conduct of adjudicative hearings involving the executive branch of Texas government.

(53) [~~(55)~~] Supervision and Control--The amount of oversight by a landscape architect overseeing the work of another whereby:

(A) the landscape architect and the individual performing the work can document frequent and detailed communication with one another and the landscape architect has both control over and detailed professional knowledge of the work; or

(B) the landscape architect is in Responsible Charge of the work and the individual performing the work is employed by the landscape architect or by the landscape architect's employer.

(54) [~~(56)~~] Supplemental Document--A document that modifies or adds to the technical landscape architectural content of an existing Construction Document.

(55) [~~(57)~~] Surrender--The act of relinquishing a Texas landscape architectural registration certificate along with all privileges associated with the certificate.

(56) [~~(58)~~] Sustainable Design--An integrative approach to the process of design which seeks to avoid depletion of energy, water, and raw material resources; prevent environmental degradation caused by facility and infrastructure development during their implementation and over their life cycle; and create environments that are livable and promote health, safety and well-being. Sustainability is the concept of meeting present needs without compromising the ability of future generations to meet their own needs.

(57) [~~(59)~~] Table of Equivalents for Experience in Landscape Architecture--22 Texas Administrative Code §3.191 and §3.192 of this chapter.

(58) [~~(60)~~] TBAE--Texas Board of Architectural Examiners.

(59) [~~(61)~~] TDLR--Texas Department of Licensing and Regulation.

(60) [~~(62)~~] Texas Department of Licensing and Regulation (TDLR)--A Texas state agency responsible for the implementation and enforcement of the Texas Architectural Barriers Act.

(61) [~~(63)~~] Texas Guaranteed Student Loan Corporation (TGSLC)--A public, nonprofit corporation that administers the Federal Family Education Loan Program.

(62) [~~(64)~~] TGSLC--Texas Guaranteed Student Loan Corporation.

(63) [~~(65)~~] Vice-Chair--The member of the Board who serves as the assistant presiding officer and, in the absence of the Chair, serves as the Board's presiding officer. If necessary, the Vice-Chair succeeds the Chair until a new Chair is appointed.

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, 2016.

TRD-201604732
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 305-8519

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SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §3.24

STATUTORY AUTHORITY

The repeal of §3.24 is proposed under Sections 1051.202, 1051.302, 1051.305, 1051.355, 1051.357, 1052.054, and 1052.154 of the Texas Occupations Code. The rule describes the processes the Board uses in establishing a fee schedule. The cited statutes provide the Board with obligations and authorizations with respect to collection of fees, as follows:

Section 1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Section 1051.305 authorizes the Board to set a fee in a reasonable and necessary amount to cover the cost of processing and investigating an application for registration by reciprocity.

Section 1051.355 requires the Board to prescribe a renewal fee for a registrant on inactive status.

Section 1051.357 requires the Board to set a renewal fee for registrants on emeritus status in an amount reasonable and necessary to recover the costs to administer this section.

Section 1052.054 authorizes the Board to set a fee for a board action involving an administrative expense in an amount that is reasonable and necessary to cover the cost of administering Chapter 1052, and requires the Board to set the renewal fee for landscape architect registrants.

Section 1052.154 requires the Board to set an examination fee in an amount reasonable and necessary to cover the cost of the examination for landscape architect registration, and under Section 1051.302, the board may delegate the collection of any examination fee prescribed by the board to the person who conducts the examination.

§3.24. Fees.

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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Lance Brenton
General Counsel
Texas Board of Architectural Examiners
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PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 100. GENERAL PROVISIONS

22 TAC §100.12

The State Board of Dental Examiners (Board) proposes new rule §100.12, concerning the blue ribbon panel on dental sedation/anesthesia safety. The rule establishes the panel and sets out its procedures and limitations.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Kelly Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to clarify the procedures relating to creating ad hoc committees. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed new rule may be submitted to Tyler Vance, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register.*

This new rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposed rule.

§100.12. Advisory Committee - Blue Ribbon Panel on Dental Sedation/Anesthesia Safety.

(a) Pursuant to board rule 100.9, chapter 2110 of the Texas Government Code, and the management direction of the Sunset Commission issued on August 22, 2016, the board establishes an independent advisory committee: the Blue Ribbon Panel on Dental Sedation/Anesthesia Safety. The advisory committee shall make recommendations to the Sunset Commission and the Texas Legislature at or before the meeting of the Sunset Commission scheduled for January 11, 2017.

(b) Purpose. The purpose of the advisory committee is to review, study, and report to the Legislature and the Sunset Commission findings and recommendations on the use and misuse of sedation/anesthesia in dentistry. Specifically, the advisory committee shall review de-identified data compiled during board investigations in fiscal years 2012 through 2016 involving patient mortalities and patient harm during or following dental treatment at which sedation/anesthesia was administered and evaluate the appropriate substance and application of emergency protocols related to the administration of sedation/anesthesia.

(c) Tasks. The advisory committee shall review de-identified investigative data; report on trends and commonalities in the de-identified investigative data, including whether or not the patient mortalities or harms were related to the administration of sedation/anesthesia, related to another aspect of the dental treatments, or unrelated to the administration of sedation/anesthesia or another aspect of the dental treatments; review anesthesia laws, regulations, and studies from other jurisdictions; and review relevant published scientific literature. In its written report, the advisory committee shall opine on whether present laws, regulations, and board policies are sufficient to protect patients and recommend appropriate change to the laws, regulations, and board policies related to the administration of sedation/anesthesia to dental patients.

(d) Creation, dissolution, and membership. The board or its presiding officer shall appoint five to ten Texas-licensed dentists to serve as members of the advisory committee. The members shall be selected from active participants of the board's Dental Review Panel. The members of the Dental Review Panel who participate in the advisory committee shall not evaluate pending investigations and provide written expert reports as Dental Review Panel members during their period of service on the advisory committee. The advisory committee is dissolved upon presentation of its final written report to the Sunset Commission on January 11, 2017. Upon the dissolution of the advisory committee, the members of the advisory committee may resume their roles on the Dental Review Panel.

(e) Chair. The advisory committee shall select from among its members a chairperson who shall preside over the advisory committee, report to the board as needed, and facilitate presentation of the final written report to the Sunset Commission.

(f) Reporting to the board. The advisory committee shall provide at least four status updates to the Executive Director of the board on or before October 12, 2016; November 11, 2016; November 23, 2016; and December 7, 2016.

(g) Final report. The chair of the advisory committee shall present the final written report at or before the meeting of the Sunset Commission scheduled for January 11, 2017.

(h) Meetings and Relationship to the Board. While the advisory committee is intellectually independent, it is a governmental body pursuant to paragraph 551.001(3)(A) of the Texas Government Code, as it is a committee in the executive branch of state government that is affiliated with and directed by the board. All meetings of the advisory committee shall be open to the public and noticed on the Secretary of State's website.

(i) Confidential information. The board may require the members of the advisory committee to execute confidentiality agreements related to their membership on the advisory committee. The board shall provide confidential de-identified data to the members of the advisory committee as directed in the management recommendation of the Sunset Commission. Violation of the confidentiality agreement is grounds for immediate removal from the advisory committee.

(j) Communication with Other Parties. Members of the advisory committee shall not engage in private communications with non-advisory committee members about the subject matter of the advisory committee or its work, except that members of the advisory committee may communicate with board staff to facilitate the completion of tasks required by this rule. Advisory committee members may only consider communications from non-committee members that have been provided verbally in public comment during an open meeting of the advisory committee. An advisory committee member who engages in private communications with non-advisory committee members about the subject matter of the advisory committee or its work will be immediately removed from the advisory committee and subject to disciplinary action for dishonorable conduct.

(k) Reimbursement. The advisory committee may be reimbursed for expenses in accordance with section 2110.004 of the Texas Government Code.

(l) Commencement. The advisory committee may convene and commence its work prior to the effective date of this rule, as directed by the board.

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, 2016.

TRD-201604702
Kelly Parker
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 475-0977

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PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER C. DISCIPLINARY GUIDELINES

22 TAC §281.65

The Texas State Board of Pharmacy proposes amendments to §281.65, concerning Schedule of Administrative Penalties. The amendments to §281.65, if adopted, correct grammar and add an administrative penalty for failing to operate a pharmacy.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure appropriate administrative penalties for pharmacies failing to operate. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Written comments on the amendments may be submitted to Allison Vordenbaumen Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-6778. Comments must be received by 5 p.m., October 25, 2016.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§281.65. Schedule of Administrative Penalties.

The board has determined that the assessment of an administrative penalty promotes the intent of §551.002 of the Act. In disciplinary matters, the board may assess an administrative penalty in addition to any other disciplinary action in the circumstances and amounts as follows:

(1) The following violations by a pharmacist may be appropriate for disposition with an administrative penalty with or without additional sanctions or restrictions:

(A) failing [~~failure~~] to provide patient counseling: $1,000;

(B) failing [~~failure~~] to conduct a drug regimen review or inappropriate drug regimen reviews provided by §291.33(c)(2)(A): $1,000;

(C) failing [~~failure~~] to clarify a prescription with the prescriber: $1,000;

(D) failing [~~failure~~] to properly supervise or improperly delegating a duty to a pharmacy technician: $1,000;

(E) failing [~~failure~~] to identify the dispensing pharmacist on required pharmacy records: $500;

(F) failing [~~failure~~] to maintain records of prescriptions: $500;

(G) failing [~~failure~~] to respond or failing [~~failure~~] to provide all requested records within the time specified in a board audit of continuing education records: $100 per hour of continuing education credit not provided;

(H) failing [~~failure~~] to provide or providing false or fraudulent information on any application, notification, or other document required under this Act, the Dangerous Drug Act, or Controlled Substances Act, or rules adopted pursuant to those Acts: $1,000;

(I) [~~shortages of prescription drugs~~] following an accountability audit, shortages of prescription drugs: up to $5,000;

(J) dispensing a prescription drug pursuant to a forged, altered, or fraudulent prescription: up to $5,000;

(K) dispensing unauthorized prescriptions: up to $5,000;

(L) dispensing controlled substances or dangerous drugs to an individual or individuals in quantities, dosages, or for periods of time which grossly exceed standards of practice, approved labeling of the federal Food and Drug Administration, or the guidelines published in professional literature: up to $5,000;

(M) violating a disciplinary order of the Board or a contract under the program to aid impaired pharmacists or pharmacy students under Chapter 564 of the Act: $500 - $1,000;

(N) failing [~~failure~~] to report or to assure the report of a malpractice claim: up to $1,000;

(O) failing [~~failure~~] to respond within the time specified on a warning notice to such warning notice issued as a result of a compliance inspection or responding to a warning notice as a result of a compliance inspection in a manner that is false or misleading: up to $1,000;

(P) practicing pharmacy with a delinquent license: $250 - $1,000;

(Q) operating a pharmacy with a delinquent license: $1,000 - $5, 000;

(R) allowing an individual to perform the duties of a pharmacy technician without a valid registration: $500 - $2,000;

(S) failing [~~failure~~] to comply with the requirements of the Official Prescription Program: up to $1,000;

(T) aiding and abetting the unlicensed practice of pharmacy, if the pharmacist knew or reasonably should have known that the person was unlicensed at the time: up to $5,000;

(U) receiving a conviction or deferred adjudication for a misdemeanor or felony, which serves as a ground for discipline under the Act: up to $5,000;

(V) unauthorized substitutions: $1,000;

(W) submitting false or fraudulent claims to third parties for reimbursement of pharmacy services: up to $5,000;

(X) selling, purchasing, or trading, or offering [~~sale, purchase, or trade or offer~~] to sell, purchase, or trade of misbranded prescription drugs or prescription drugs beyond the manufacturer's expiration date: up to $1,000;

(Y) selling, purchasing, or trading, or offering [~~sale, purchase, or trade or offer~~] to sell, purchase, or trade of prescription drug samples as provided by §281.7(a)(27) of this title (relating to Grounds for Discipline for a Pharmacist License): up to $1,000;

(Z) failing [~~failure~~] to keep, maintain or furnish an annual inventory as required by §291.17: $1,000;

(AA) failing [~~failure~~] to obtain training on the preparation of sterile pharmaceutical compounding: $1,000;

(BB) failing [~~failure~~] to maintain the confidentiality of prescription records: $1,000 - $5,000;

(CC) failing [~~failure~~] to inform the board of any notification or information required to be reported by the Act or rules: $250 - $500; and

(DD) failing to operate a pharmacy as provided by §291.11 of this title (relating to Operation of a Pharmacy): $2,000.

(2) The following violations by a pharmacy may be appropriate for disposition with an administrative penalty with or without additional sanctions or restrictions:

(A) failing [~~failure~~] to provide patient counseling: $1,500;

(B) failing [~~failure~~] to conduct a drug regimen review or inappropriate drug regimen reviews provided by §291.33(c)(2)(A) of this title (relating to Operational Standards): $1,500;

(C) failing [~~failure~~] to clarify a prescription with the prescriber: $1,500;

(D) failing [~~failure~~] to properly supervise or improperly delegating a duty to a pharmacy technician: $1,500;

(E) failing [~~failure~~] to identify the dispensing pharmacist on required pharmacy records: $500;

(F) failing [~~failure~~] to maintain records of prescriptions: $500;

(G) failing [~~failure~~] to provide or providing false or fraudulent information on any application, notification, or other document required under this Act, the Dangerous Drug Act, or Controlled Substances Act, or rules adopted pursuant to those Acts: $1,000;

(H) [~~shortages of prescription drugs~~] following an accountability audit, shortages of prescription drugs: up to $5,000;

(I) dispensing a prescription drug pursuant to a forged, altered, or fraudulent prescription: up to $5,000;

(J) dispensing unauthorized prescriptions: up to $5,000;

(K) dispensing controlled substances or dangerous drugs to an individual or individuals in quantities, dosages, or for periods of time which grossly exceed standards of practice, approved labeling of the federal Food and Drug Administration, or the guidelines published in professional literature: up to $5,000;

(L) violating a disciplinary order of the Board: $1,000 - $5,000;

(M) failing [~~failure~~] to report or to assure the report of a malpractice claim: up to $1,000;

(N) failing [~~failure~~] to respond within the time specified on a warning notice to such warning notice issued as a result of a compliance inspection or responding to a warning notice as a result of a compliance inspection in a manner that is false or misleading: up to $1,000;

(O) allowing a pharmacist to practicing pharmacy with a delinquent license: $250 - $1,000;

(P) operating a pharmacy with a delinquent license: $1,000 - $5,000;

(Q) allowing an individual to perform the duties of a pharmacy technician without a valid registration: $500 - $3,000;

(R) failing [~~failure~~] to comply with the requirements of the Official Prescription Program: up to $1,000;

(S) aiding and abetting the unlicensed practice of pharmacy, if an employee of the pharmacy knew or reasonably should have known that the person engaging in the practice of pharmacy was unlicensed at the time: up to $5,000;

(T) receiving a conviction or deferred adjudication for a misdemeanor or felony which serves as a ground for discipline under the Act: up to $5,000;

(U) unauthorized substitutions: $1,000;

(V) submitting false or fraudulent claims to third parties for reimbursement of pharmacy services: up to $5,000;

(W) possessing or engaging in the sale, purchase, or trade or the offer to sell, purchase, or trade of misbranded prescription drugs or prescription drugs beyond the manufacturer's expiration date: up to $1,000;

(X) possessing or engaging in the sale, purchase, or trade or the offer to sell, purchase, or trade of prescription drug samples as provided by §281.8(b)(2) of this title (relating to Grounds for Discipline for a Pharmacy License): up to $1,000;

(Y) failing [~~failure~~] to keep, maintain or furnish an annual inventory as required by §291.17 of this title (relating to Inventory Requirements): $1,000;

(Z) failing [~~failure~~] to obtain training on the preparation of sterile pharmaceutical compounding: $1,500;

(AA) failing [~~failure~~] to maintain the confidentiality of prescription records: $1,000 - $5,000;

(BB) failing [~~failure~~] to inform the board of any notification or information required to be reported by the Act or rules: $250 - $500; and[~~.~~]

(CC) failing to operate a pharmacy as provided by §291.11 of this title (relating to Operation of a Pharmacy): $3,000.

(3) The following violations by a pharmacy technician may be appropriate for disposition with an administrative penalty with or without additional sanctions or restrictions:

(A) failing [~~failure~~] to respond or failing [~~failure~~] to provide all requested records within the time specified in a board audit of continuing education records: $30 per hour of continuing education credit not provided;

(B) failing [~~failure~~] to provide or providing false or fraudulent information on any application, notification, or other document required under this Act, the Dangerous Drug Act, or Controlled Substances Act, or rules adopted pursuant to those Acts: $500;

(C) [~~shortages of prescription drugs~~] following an accountability audit, shortages of prescription drugs: up to $5,000;

(D) violating a disciplinary Order of the Board: $250 - $500;

(E) failing [~~failure~~] to report or to assure the report of a malpractice claim: up to $500;

(F) performing the duties of a pharmacy technician without a valid registration: $250 - $1,000;

(G) receiving a conviction or deferred adjudication for a misdemeanor or felony, which serves as a ground for discipline under the Act: up to $5,000;

(H) submitting false or fraudulent claims to third parties for reimbursement of pharmacy services: up to $5,000;

(I) failing [~~failure~~] to obtain training on the preparation of sterile pharmaceutical compounding: $1,000;

(J) failing [~~failure~~] to maintain the confidentiality of prescription records: $1,000 - $5,000;

(K) failing [~~failure~~] to inform the board of any notification or information required to be reported by the Act or rules: $100 - $250.

(4) Any of the violations listed in this section may be appropriate for disposition by the administrative penalties in this section in conjunction with any other penalties in §281.61 of this chapter.

(5) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty or fine.

(6) The amount, to the extent possible, shall be based on:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(B) the economic harm to property or the environment caused by the violation;

(C) the history of previous violations;

(D) the amount necessary to deter a future violation;

(E) efforts to correct the violation; and

(F) and other matter that justice may require.

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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Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 305-8028

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CHAPTER 291. PHARMACIES
SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.34

The Texas State Board of Pharmacy proposes amendments to §291.34, concerning Records. The amendments to §291.34, if adopted, implement provisions of S.B. 195 passed during the 2015 Texas Legislative session which update the requirements regarding Class A pharmacies dispensing schedule II controlled substance prescriptions issued by prescribers licensed in a state other than Texas to require the plan be approved by the Texas State Board of Pharmacy.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there

will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure appropriate administrative penalties for pharmacies failing to operate. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Written comments on the amendments may be submitted to Allison Vordenbaumen Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-6778. Comments must be received by 5 p.m., October 25, 2016.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.34. Records.

(a) Maintenance of records.

(1) Every inventory or other record required to be kept under the provisions of Subchapter B of this chapter (relating to Community Pharmacy (Class A)) shall be:

(A) kept by the pharmacy at the pharmacy's licensed location and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in a mutually agreeable electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) Records of controlled substances listed in Schedule II shall be maintained separately from all other records of the pharmacy.

(3) Records of controlled substances, other than prescription drug orders, listed in Schedules III-V shall be maintained separately or readily retrievable from all other records of the pharmacy. For purposes of this subsection, readily retrievable means that the controlled substances shall be asterisked, red-lined, or in some other manner readily identifiable apart from all other items appearing on the record.

(4) Records, except when specifically required to be maintained in original or hard copy form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

(A) the records maintained in the alternative system contain all of the information required on the manual record; and

(B) the data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(b) Prescriptions.

(1) Professional responsibility.

(A) Pharmacists shall exercise sound professional judgment with respect to the accuracy and authenticity of any prescription drug order they dispense. If the pharmacist questions the accuracy or authenticity of a prescription drug order, he/she shall verify the order with the practitioner prior to dispensing.

(B) Prior to dispensing a prescription, pharmacists shall determine, in the exercise of sound professional judgment, that the prescription is a valid prescription. A pharmacist may not dispense a prescription drug unless the pharmacist complies with the requirements of §562.056 of the Act, and §291.29 of this title (relating to Professional Responsibility of Pharmacists).

(C) Subparagraph (B) of this paragraph does not prohibit a pharmacist from dispensing a prescription when a valid patient-practitioner relationship is not present in an emergency situation (e.g., a practitioner taking calls for the patient's regular practitioner).

(2) Written prescription drug orders.

(A) Practitioner's signature.

(i) Dangerous drug prescription orders. Written prescription drug orders shall be:

(I) manually signed by the practitioner; or

(II) electronically signed by the practitioner using a system that electronically replicates the practitioner's manual signature on the written prescription, provided:

(-a-) that security features of the system require the practitioner to authorize each use; and

(-b-) the prescription is printed on paper that is designed to prevent unauthorized copying of a completed prescription and to prevent the erasure or modification of information written on the prescription by the prescribing practitioner. (For example, the paper contains security provisions against copying that results in some indication on the copy that it is a copy and therefore render the prescription null and void.)

(ii) Controlled substance prescription orders. Prescription drug orders for Schedule II, III, IV, or V controlled substances shall be manually signed by the practitioner. Prescription drug orders for Schedule II controlled substances shall be issued on an official prescription form as required by the Texas Controlled Substances Act, §481.075.

(iii) Other provisions for a practitioner's signature.

(I) A practitioner may sign a prescription drug order in the same manner as he would sign a check or legal document, e.g., J.H. Smith or John H. Smith.

(II) Rubber stamped or otherwise reproduced signatures may not be used except as authorized in clause (i) of this subparagraph.

(III) The prescription drug order may not be signed by a practitioner's agent but may be prepared by an agent for the signature of a practitioner. However, the prescribing practitioner is responsible in case the prescription drug order does not conform in all essential respects to the law and regulations.

(B) Prescription drug orders written by practitioners in another state.

(i) Dangerous drug prescription orders. A pharmacist may dispense a prescription drug order for dangerous drugs issued by practitioners in a state other than Texas in the same manner as prescription drug orders for dangerous drugs issued by practitioners in Texas are dispensed.

(ii) Controlled substance prescription drug orders.

(I) A pharmacist may dispense prescription drug order for controlled substances in Schedule II issued by a practitioner in another state provided:

(-a-) the prescription is dispensed as specified in §315.9 of this title (relating to Pharmacy Responsibility - Out-of-State Practitioner - Effective September 1, 2016) [~~filled in compliance with a written plan approved by the Director of the Texas Department of Public Safety in consultation with the Board, which provides the manner in which the dispensing pharmacy may fill a prescription for a Schedule II controlled substance~~];

(-b-) the prescription drug order is an original written prescription issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration (DEA) registration number, and who may legally prescribe Schedule II controlled substances in such other state; and

(-c-) the prescription drug order is not dispensed after the end of the twenty-first day after the date on which the prescription is issued.

(II) A pharmacist may dispense prescription drug orders for controlled substances in Schedule III, IV, or V issued by a physician, dentist, veterinarian, or podiatrist in another state provided:

(-a-) the prescription drug order is issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal DEA registration number, and who may legally prescribe Schedule III, IV, or V controlled substances in such other state;

(-b-) the prescription drug order is not dispensed or refilled more than six months from the initial date of issuance and may not be refilled more than five times; and

(-c-) if there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order have been dispensed, a new prescription drug order is obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(C) Prescription drug orders written by practitioners in the United Mexican States or the Dominion of Canada.

(i) Controlled substance prescription drug orders. A pharmacist may not dispense a prescription drug order for a Schedule II, III, IV, or V controlled substance issued by a practitioner in the Dominion of Canada or the United Mexican States.

(ii) Dangerous drug prescription drug orders. A pharmacist may dispense a dangerous drug prescription issued by a person licensed in the Dominion of Canada or the United Mexican States as a physician, dentist, veterinarian, or podiatrist provided:

(I) the prescription drug order is an original written prescription; and

(II) if there are no refill instructions on the original written prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original written prescription drug order have been dispensed, a new written prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of dangerous drugs.

(D) Prescription drug orders issued by an advanced practice registered nurse, physician assistant, or pharmacist.

(i) A pharmacist may dispense a prescription drug order that is:

(I) issued by an advanced practice registered nurse or physician assistant provided the advanced practice registered nurse or physician assistant is practicing in accordance with Subtitle B, Chapter 157, Occupations Code; and

(II) for a dangerous drug and signed by a pharmacist under delegated authority of a physician as specified in Subtitle B, Chapter 157, Occupations Code.

(ii) Each practitioner shall designate in writing the name of each advanced practice registered nurse or physician assistant authorized to issue a prescription drug order pursuant to Subtitle B, Chapter 157, Occupations Code. A list of the advanced practice registered nurses or physician assistants designated by the practitioner must be maintained in the practitioner's usual place of business. On request by a pharmacist, a practitioner shall furnish the pharmacist with a copy of the written authorization for a specific advanced practice registered nurse or physician assistant.

(E) Prescription drug orders for Schedule II controlled substances. No Schedule II controlled substance may be dispensed without a written prescription drug order of a practitioner on an official prescription form as required by the Texas Controlled Substances Act, §481.075.

(3) Verbal prescription drug orders.

(A) A verbal prescription drug order from a practitioner or a practitioner's designated agent may only be received by a pharmacist or a pharmacist-intern under the direct supervision of a pharmacist.

(B) A practitioner shall designate in writing the name of each agent authorized by the practitioner to communicate prescriptions verbally for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(C) A pharmacist may not dispense a verbal prescription drug order for a dangerous drug or a controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(4) Electronic prescription drug orders.

(A) Dangerous drug prescription orders.

(i) An electronic prescription drug order for a dangerous drug may be transmitted by a practitioner or a practitioner's designated agent:

(I) directly to a pharmacy; or

(II) through the use of a data communication device provided:

(-a-) the confidential prescription information is not altered during transmission; and

(-b-) confidential patient information is not accessed or maintained by the operator of the data communication device other than for legal purposes under federal and state law.

(ii) A practitioner shall designate in writing the name of each agent authorized by the practitioner to electronically transmit prescriptions for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(B) Controlled substance prescription orders. A pharmacist may only dispense an electronic prescription drug order for a Schedule II, III, IV, or V controlled substance in compliance with the federal and state laws and the rules of the Drug Enforcement Administration outlined in Part 1300 of the Code of Federal Regulations and Texas Department of Public Safety.

(C) Prescriptions issued by a practitioner licensed in the Dominion of Canada or the United Mexican States. A pharmacist may not dispense an electronic prescription drug order for a dangerous drug or controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(5) Facsimile (faxed) prescription drug orders.

(A) A pharmacist may dispense a prescription drug order for a dangerous drug transmitted to the pharmacy by facsimile.

(B) A pharmacist may dispense a prescription drug order for a Schedule III-V controlled substance transmitted to the pharmacy by facsimile provided the prescription is manually signed by the practitioner and not electronically signed using a system that electronically replicates the practitioner's manual signature on the prescription drug order.

(C) A pharmacist may not dispense a facsimile prescription drug order for a dangerous drug or controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(6) Original prescription drug order records.

(A) Original prescriptions may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order including clarifications to the order given to the pharmacist by the practitioner or the practitioner's agent and recorded on the prescription.

(B) Original prescriptions shall be maintained by the pharmacy in numerical order and remain legible for a period of two years from the date of filling or the date of the last refill dispensed.

(C) If an original prescription drug order is changed, such prescription order shall be invalid and of no further force and effect; if additional drugs are to be dispensed, a new prescription drug order with a new and separate number is required. However, an original prescription drug order for a dangerous drug may be changed in accordance with paragraph (10) of this subsection relating to accelerated refills.

(D) Original prescriptions shall be maintained in three separate files as follows:

(i) prescriptions for controlled substances listed in Schedule II;

(ii) prescriptions for controlled substances listed in Schedules III-V; and

(iii) prescriptions for dangerous drugs and nonprescription drugs.

(E) Original prescription records other than prescriptions for Schedule II controlled substances may be stored in a system that is capable of producing a direct image of the original prescription record, e.g., digitalized imaging system. If original prescription records are stored in a direct imaging system, the following is applicable:

(i) the record of refills recorded on the original prescription must also be stored in this system;

(ii) the original prescription records must be maintained in numerical order and separated in three files as specified in subparagraph (D) of this paragraph; and

(iii) the pharmacy must provide immediate access to equipment necessary to render the records easily readable.

(7) Prescription drug order information.

(A) All original prescriptions shall bear:

(i) name of the patient, or if such drug is for an animal, the species of such animal and the name of the owner;

(ii) address of the patient, provided, however, a prescription for a dangerous drug is not required to bear the address of the patient if such address is readily retrievable on another appropriate, uniformly maintained pharmacy record, such as medication records;

(iii) name, address and telephone number of the practitioner at the practitioner's usual place of business, legibly printed or stamped and if for a controlled substance, the DEA registration number of the practitioner;

(iv) name and strength of the drug prescribed;

(v) quantity prescribed numerically and if for a controlled substance:

(I) numerically, followed by the number written as a word, if the prescription is written;

(II) numerically, if the prescription is electronic; or

(III) if the prescription is communicated orally or telephonically, as transcribed by the receiving pharmacist;

(vi) directions for use;

(vii) intended use for the drug unless the practitioner determines the furnishing of this information is not in the best interest of the patient;

(viii) date of issuance;

(ix) if a faxed prescription:

(I) a statement that indicates that the prescription has been faxed (e.g., Faxed to); and

(II) if transmitted by a designated agent, the name of the designated agent;

(x) if electronically transmitted:

(I) the date the prescription drug order was electronically transmitted to the pharmacy, if different from the date of issuance of the prescription; and

(II) if transmitted by a designated agent, the name of the designated agent; and

(xi) if issued by an advanced practice nurse or physician assistant in accordance with Subtitle B, Chapter 157, Occupations Code the:

(I) name, address, telephone number, and if the prescription is for a controlled substance, the DEA number of the supervising practitioner; and

(II) address and telephone number of the clinic where the prescription drug order was carried out or signed.

(B) At the time of dispensing, a pharmacist is responsible for documenting the following information on either the original hard copy prescription or in the pharmacy's data processing system:

(i) unique identification number of the prescription drug order;

(ii) initials or identification code of the dispensing pharmacist;

(iii) initials or identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;

(iv) quantity dispensed, if different from the quantity prescribed;

(v) date of dispensing, if different from the date of issuance; and

(vi) brand name or manufacturer of the drug or biological product actually dispensed, if the drug was prescribed by generic name or interchangeable biological name or if a drug or interchangeable biological product other than the one prescribed was dispensed pursuant to the provisions of the Act, Chapters 562 and 563.

(8) Refills.

(A) General information.

(i) Refills may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order except as authorized in paragraph (10) of this subsection relating to accelerated refills.

(ii) If there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner shall be obtained prior to dispensing any refills and documented as specified in subsection (l) of this section.

(B) Refills of prescription drug orders for dangerous drugs or nonprescription drugs.

(i) Prescription drug orders for dangerous drugs or nonprescription drugs may not be refilled after one year from the date of issuance of the original prescription drug order.

(ii) If one year has expired from the date of issuance of an original prescription drug order for a dangerous drug or nonprescription drug, authorization shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of the drug.

(C) Refills of prescription drug orders for Schedules III-V controlled substances.

(i) Prescription drug orders for Schedules III-V controlled substances may not be refilled more than five times or after six months from the date of issuance of the original prescription drug order, whichever occurs first.

(ii) If a prescription drug order for a Schedule III, IV, or V controlled substance has been refilled a total of five times or if six months have expired from the date of issuance of the original prescription drug order, whichever occurs first, a new and separate prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(D) Pharmacist unable to contact prescribing practitioner. If a pharmacist is unable to contact the prescribing practitioner after a reasonable effort, a pharmacist may exercise his professional judgment in refilling a prescription drug order for a drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

(i) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(ii) the quantity of prescription drug dispensed does not exceed a 72-hour supply;

(iii) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(iv) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(v) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection;

(vi) the pharmacist affixes a label to the dispensing container as specified in §291.33(c)(7) of this title; and

(vii) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his professional judgment in refilling the prescription provided:

(I) the patient has the prescription container, label, receipt or other documentation from the other pharmacy that contains the essential information;

(II) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(III) the pharmacist, in his professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of clause (i) of this subparagraph; and

(IV) the pharmacist complies with the requirements of clauses (ii) - (vi) of this subparagraph.

(E) Natural or manmade disasters. If a natural or manmade disaster has occurred that prohibits the pharmacist from being able to contact the practitioner, a pharmacist may exercise his professional judgment in refilling a prescription drug order for a drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

(i) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(ii) the quantity of prescription drug dispensed does not exceed a 30-day supply;

(iii) the governor has declared a state of disaster;

(iv) the board, through the executive director, has notified pharmacies that pharmacists may dispense up to a 30-day supply of prescription drugs;

(v) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without

such authorization and that authorization of the practitioner is required for future refills;

(vi) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(vii) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection;

(viii) the pharmacist affixes a label to the dispensing container as specified in §291.33(c)(7) of this title; and

(ix) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his professional judgment in refilling the prescription provided:

(I) the patient has the prescription container, label, receipt or other documentation from the other pharmacy that contains the essential information;

(II) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(III) the pharmacist, in his professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of clause (i) of this subparagraph; and

(IV) the pharmacist complies with the requirements of clauses (ii) - (viii) of this subparagraph.

(F) Auto-Refill Programs. A pharmacy may use a program that automatically refills prescriptions that have existing refills available in order to improve patient compliance with and adherence to prescribed medication therapy. The following is applicable in order to enroll patients into an auto-refill program.

(i) Notice of the availability of an auto-refill program shall be given to the patient or patient's agent, and the patient or patient's agent must affirmatively indicate that they wish to enroll in such a program and the pharmacy shall document such indication.

(ii) The patients or patient's agent shall have the option to withdraw from such a program at any time.

(iii) Auto-refill programs may be used for refills of dangerous drugs, and schedule IV and V controlled substances. Schedule II and III controlled substances may not be dispensed by an auto-refill program.

(iv) As is required for all prescriptions, a drug regimen review shall be completed on all prescriptions filled as a result of the auto-refill program. Special attention shall be noted for drug regimen review warnings of duplication of therapy and all such conflicts shall be resolved with the prescribing practitioner prior to refilling the prescription.

(9) Records Relating to Dispensing Errors. If a dispensing error occurs, the following is applicable.

(A) Original prescription drug orders:

(i) shall not be destroyed and must be maintained in accordance with subsection (a) of this section; and

(ii) shall not be altered. Altering includes placing a label or any other item over any of the information on the prescription drug order (e.g., a dispensing tag or label that is affixed to back of a prescription drug order must not be affixed on top of another dispensing tag or label in such a manner as to obliterate the information relating to the error).

(B) Prescription drug order records maintained in a data processing system:

(i) shall not be deleted and must be maintained in accordance with subsection (a) of this section;

(ii) may be changed only in compliance with subsection (e)(2)(B) of this section; and

(iii) if the error involved incorrect data entry into the pharmacy's data processing system, this record must be either voided or cancelled in the data processing system, so that the incorrectly entered prescription drug order may not be dispensed, or the data processing system must be capable of maintaining an audit trail showing any changes made to the data in the system.

(10) Accelerated refills. In accordance with §562.0545 of the Act, a pharmacist may dispense up to a 90-day supply of a dangerous drug pursuant to a valid prescription that specifies the dispensing of a lesser amount followed by periodic refills of that amount if:

(A) the total quantity of dosage units dispensed does not exceed the total quantity of dosage units authorized by the prescriber on the original prescription, including refills;

(B) the patient consents to the dispensing of up to a 90-day supply and the physician has been notified electronically or by telephone;

(C) the physician has not specified on the prescription that dispensing the prescription in an initial amount followed by periodic refills is medically necessary;

(D) the dangerous drug is not a psychotropic drug used to treat mental or psychiatric conditions; and

(E) the patient is at least 18 years of age.

(c) Patient medication records.

(1) A patient medication record system shall be maintained by the pharmacy for patients to whom prescription drug orders are dispensed.

(2) The patient medication record system shall provide for the immediate retrieval of information for the previous 12 months that is necessary for the dispensing pharmacist to conduct a prospective drug regimen review at the time a prescription drug order is presented for dispensing.

(3) The pharmacist-in-charge shall assure that a reasonable effort is made to obtain and record in the patient medication record at least the following information:

(A) full name of the patient for whom the drug is prescribed;

(B) address and telephone number of the patient;

(C) patient's age or date of birth;

(D) patient's gender;

(E) any known allergies, drug reactions, idiosyncrasies, and chronic conditions or disease states of the patient and the identity of any other drugs currently being used by the patient which may relate to prospective drug regimen review;

(F) pharmacist's comments relevant to the individual's drug therapy, including any other information unique to the specific patient or drug; and

(G) a list of all prescription drug orders dispensed (new and refill) to the patient by the pharmacy during the last two years. Such list shall contain the following information:

(i) date dispensed;

(ii) name, strength, and quantity of the drug dispensed;

(iii) prescribing practitioner's name;

(iv) unique identification number of the prescription; and

(v) name or initials of the dispensing pharmacists.

(4) A patient medication record shall be maintained in the pharmacy for two years. If patient medication records are maintained in a data processing system, all of the information specified in this subsection shall be maintained in a retrievable form for two years and information for the previous 12 months shall be maintained on-line. A patient medication record must contain documentation of any modification, change, or manipulation to a patient profile.

(5) Nothing in this subsection shall be construed as requiring a pharmacist to obtain, record, and maintain patient information other than prescription drug order information when a patient or patient's agent refuses to provide the necessary information for such patient medication records.

(d) Prescription drug order records maintained in a manual system.

(1) Original prescriptions shall be maintained in three files as specified in subsection (b)(6)(D) of this section.

(2) Refills.

(A) Each time a prescription drug order is refilled, a record of such refill shall be made:

(i) on the back of the prescription by recording the date of dispensing, the written initials or identification code of the dispensing pharmacist, the initials or identification code of the pharmacy technician or pharmacy technician trainee preparing the prescription label, if applicable, and the amount dispensed. (If the pharmacist merely initials and dates the back of the prescription drug order, he or she shall be deemed to have dispensed a refill for the full face amount of the prescription drug order); or

(ii) on another appropriate, uniformly maintained, readily retrievable record, such as medication records, that indicates by patient name the following information:

(I) unique identification number of the prescription;

(II) name and strength of the drug dispensed;

(III) date of each dispensing;

(IV) quantity dispensed at each dispensing;

(V) initials or identification code of the dispensing pharmacist;

(VI) initials or identification code of the pharmacy technician or pharmacy technician trainee preparing the prescription label, if applicable; and

(VII) total number of refills for the prescription.

(B) If refill records are maintained in accordance with subparagraph (A)(ii) of this paragraph, refill records for controlled substances in Schedules III-V shall be maintained separately from refill records of dangerous drugs and nonprescription drugs.

(3) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted on the original prescription, in addition to the documentation of dispensing the refill as specified in subsection (l) of this section.

(4) Each time a modification, change, or manipulation is made to a record of dispensing, documentation of such change shall be recorded on the back of the prescription or on another appropriate, uniformly maintained, readily retrievable record, such as medication records. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration.

(e) Prescription drug order records maintained in a data processing system.

(1) General requirements for records maintained in a data processing system.

(A) Compliance with data processing system requirements. If a Class A pharmacy's data processing system is not in compliance with this subsection, the pharmacy must maintain a manual recordkeeping system as specified in subsection (d) of this section.

(B) Original prescriptions. Original prescriptions shall be maintained in three files as specified in subsection (b)(6)(D) of this section.

(C) Requirements for backup systems.

(i) The pharmacy shall maintain a backup copy of information stored in the data processing system using disk, tape, or other electronic backup system and update this backup copy on a regular basis, at least monthly, to assure that data is not lost due to system failure.

(ii) Data processing systems shall have a workable (electronic) data retention system that can produce an audit trail of drug usage for the preceding two years as specified in paragraph (2)(H) of this subsection.

(D) Change or discontinuance of a data processing system.

(i) Records of dispensing. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records of dispensing to the new data processing system; or

(II) purge the records of dispensing to a printout that contains the same information required on the daily printout as specified in paragraph (2)(C) of this subsection. The information on this hard copy printout shall be sorted and printed by prescription number and list each dispensing for this prescription chronologically.

(ii) Other records. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records to the new data processing system; or

(II) purge the records to a printout that contains all of the information required on the original document.

(iii) Maintenance of purged records. Information purged from a data processing system must be maintained by the pharmacy for two years from the date of initial entry into the data processing system.

(E) Loss of data. The pharmacist-in-charge shall report to the board in writing any significant loss of information from the data processing system within 10 days of discovery of the loss.

(2) Records of dispensing.

(A) Each time a prescription drug order is filled or refilled, a record of such dispensing shall be entered into the data processing system.

(B) Each time a modification, change or manipulation is made to a record of dispensing, documentation of such change shall be recorded in the data processing system. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration. Should the data processing system not be able to record a modification, change, or manipulation to a record of dispensing, the information should be clearly documented on the hard copy prescription.

(C) The data processing system shall have the capacity to produce a daily hard copy printout of all original prescriptions dispensed and refilled. This hard copy printout shall contain the following information:

(i) unique identification number of the prescription;

(ii) date of dispensing;

(iii) patient name;

(iv) prescribing practitioner's name; and the supervising physician's name if the prescription was issued by an advanced practice registered nurse, physician assistant or pharmacist;

(v) name and strength of the drug product actually dispensed; if generic name, the brand name or manufacturer of drug dispensed;

(vi) quantity dispensed;

(vii) initials or an identification code of the dispensing pharmacist;

(viii) initials or an identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;

(ix) if not immediately retrievable via computer display, the following shall also be included on the hard copy printout:

(I) patient's address;

(II) prescribing practitioner's address;

(III) practitioner's DEA registration number, if the prescription drug order is for a controlled substance;

(IV) quantity prescribed, if different from the quantity dispensed;

(V) date of issuance of the prescription drug order, if different from the date of dispensing; and

(VI) total number of refills dispensed to date for that prescription drug order; and

(x) any changes made to a record of dispensing.

(D) The daily hard copy printout shall be produced within 72 hours of the date on which the prescription drug orders were dispensed and shall be maintained in a separate file at the pharmacy. Records of controlled substances shall be readily retrievable from records of noncontrolled substances.

(E) Each individual pharmacist who dispenses or refills a prescription drug order shall verify that the data indicated on the daily hard copy printout is correct, by dating and signing such document in the same manner as signing a check or legal document (e.g., J.H. Smith, or John H. Smith) within seven days from the date of dispensing.

(F) In lieu of the printout described in subparagraph (C) of this paragraph, the pharmacy shall maintain a log book in which each individual pharmacist using the data processing system shall sign a statement each day, attesting to the fact that the information entered into the data processing system that day has been reviewed by him or her and is correct as entered. Such log book shall be maintained at the pharmacy employing such a system for a period of two years after the date of dispensing; provided, however, that the data processing system can produce the hard copy printout on demand by an authorized agent of the Texas State Board of Pharmacy. If no printer is available on site, the hard copy printout shall be available within 72 hours with a certification by the individual providing the printout, that states that the printout is true and correct as of the date of entry and such information has not been altered, amended, or modified.

(G) The pharmacist-in-charge is responsible for the proper maintenance of such records and responsible that such data processing system can produce the records outlined in this section and that such system is in compliance with this subsection.

(H) The data processing system shall be capable of producing a hard copy printout of an audit trail for all dispensings (original and refill) of any specified strength and dosage form of a drug (by either brand or generic name or both) during a specified time period.

(i) Such audit trail shall contain all of the information required on the daily printout as set out in subparagraph (C) of this paragraph.

(ii) The audit trail required in this subparagraph shall be supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy.

(I) Failure to provide the records set out in this subsection, either on site or within 72 hours constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(J) The data processing system shall provide on-line retrieval (via computer display or hard copy printout) of the information set out in subparagraph (C) of this paragraph of:

(i) the original controlled substance prescription drug orders currently authorized for refilling; and

(ii) the current refill history for Schedules III, IV, and V controlled substances for the immediately preceding six-month period.

(K) In the event that a pharmacy that uses a data processing system experiences system downtime, the following is applicable:

(i) an auxiliary procedure shall ensure that refills are authorized by the original prescription drug order and that the maximum number of refills has not been exceeded or authorization from the prescribing practitioner shall be obtained prior to dispensing a refill; and

(ii) all of the appropriate data shall be retained for on-line data entry as soon as the system is available for use again.

(3) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted as follows:

(A) on the hard copy prescription drug order;

(B) on the daily hard copy printout; or

(C) via the computer display.

(f) Limitation to one type of recordkeeping system. When filing prescription drug order information a pharmacy may use only one of the two systems described in subsection (d) or (e) of this section.

(g) Transfer of prescription drug order information. For the purpose of initial or refill dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements.

(1) The transfer of original prescription drug order information for controlled substances listed in Schedule III, IV, or V is permissible between pharmacies on a one-time basis only. However, pharmacies electronically sharing a real-time, on-line database may transfer up to the maximum refills permitted by law and the prescriber's authorization.

(2) The transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies without limitation up to the number of originally authorized refills.

(3) The transfer is communicated orally by telephone or via facsimile directly by a pharmacist to another pharmacist; by a pharmacist to a student-intern, extended-intern, or resident-intern; or by a student-intern, extended-intern, or resident-intern to another pharmacist.

(4) Both the original and the transferred prescription drug orders are maintained for a period of two years from the date of last refill.

(5) The individual transferring the prescription drug order information shall ensure the following occurs:

(A) write the word "void" on the face of the invalidated prescription or the prescription is voided in the data processing system;

(B) record the name, address, if for a controlled substance, the DEA registration number of the pharmacy to which it was transferred, and the name of the receiving individual on the reverse of the invalidated prescription or stored with the invalidated prescription drug order in the data processing system;

(C) record the date of the transfer and the name of the individual transferring the information; and

(D) if the prescription is transferred electronically, provide the following information:

(i) date of original dispensing and prescription number;

(ii) number of refills remaining and if a controlled substance, the date(s) and location(s) of previous refills;

(iii) name, address, and if a controlled substance, the DEA registration number of the transferring pharmacy;

(iv) name of the individual transferring the prescription; and

(v) if a controlled substance, name, address and DEA registration number, and prescription number from the pharmacy that originally dispensed the prescription, if different.

(6) The individual receiving the transferred prescription drug order information shall:

(A) write the word "transfer" on the face of the prescription or the prescription record indicates the prescription was a transfer; and

(B) reduce to writing all of the information required to be on a prescription as specified in subsection (b)(7) of this section (relating to Prescriptions) and including the following information;

(i) date of issuance and prescription number;

(ii) original number of refills authorized on the original prescription drug order;

(iii) date of original dispensing;

(iv) number of valid refills remaining and if a controlled substance, date(s) and location(s) of previous refills;

(v) name, address, and if for a controlled substance, the DEA registration number of the transferring pharmacy;

(vi) name of the individual transferring the prescription; and

(vii) name, address, and if for a controlled substance, the DEA registration number, of the pharmacy that originally dispensed the prescription, if different; or

(C) if the prescription is transferred electronically, create an electronic record for the prescription that includes the receiving pharmacist's name and all of the information transferred with the prescription including all of the information required to be on a prescription as specified in subsection (b)(7) of this section (relating to Prescriptions) and the following:

(i) date of original dispensing;

(ii) number of refills remaining and if a controlled substance, the prescription number(s), date(s) and location(s) of previous refills;

(iii) name, address, and if for a controlled substance, the DEA registration number;

(iv) name of the individual transferring the prescription; and

(v) name, address, and if for a controlled substance, the DEA registration number, of the pharmacy that originally filled the prescription.

(7) Both the individual transferring the prescription and the individual receiving the prescription must engage in confirmation of the prescription information by such means as:

(A) the transferring individual faxes the hard copy prescription to the receiving individual; or

(B) the receiving individual repeats the verbal information from the transferring individual and the transferring individual verbally confirms that the repeated information is correct.

(8) Pharmacies transferring prescriptions electronically shall comply with the following:

(A) Prescription drug orders may not be transferred by non-electronic means during periods of downtime except on consultation with and authorization by a prescribing practitioner; provided however, during downtime, a hard copy of a prescription drug order may be made available for informational purposes only, to the patient or a pharmacist, and the prescription may be read to a pharmacist by telephone.

(B) The original prescription drug order shall be invalidated in the data processing system for purposes of filling or refilling, but shall be maintained in the data processing system for refill history purposes.

(C) If the data processing system does not have the capacity to store all the information as specified in paragraphs (5) and (6) of this subsection, the pharmacist is required to record this information on the original or transferred prescription drug order.

(D) The data processing system shall have a mechanism to prohibit the transfer or refilling of controlled substance prescription drug orders that have been previously transferred.

(E) Pharmacies electronically accessing the same prescription drug order records may electronically transfer prescription information if the following requirements are met.

(i) The original prescription is voided and the pharmacies' data processing systems shall store all the information as specified in paragraphs (5) and (6) of this subsection.

(ii) Pharmacies not owned by the same entity may electronically access the same prescription drug order records, provided the owner, chief executive officer, or designee of each pharmacy signs an agreement allowing access to such prescription drug order records.

(iii) An electronic transfer between pharmacies may be initiated by a pharmacist intern, pharmacy technician, or pharmacy technician trainee acting under the direct supervision of a pharmacist.

(9) An individual may not refuse to transfer original prescription information to another individual who is acting on behalf of a patient and who is making a request for this information as specified in this subsection. The transfer of original prescription information must be completed within four business hours of the request.

(10) When transferring a compounded prescription, a pharmacy is required to provide all of the information regarding the compounded preparation including the formula unless the formula is patented or otherwise protected, in which case, the transferring pharmacy shall, at a minimum, provide the quantity or strength of all of the active ingredients of the compounded preparation.

(11) The electronic transfer of multiple or bulk prescription records between two pharmacies is permitted provided:

(A) a record of the transfer as specified in paragraph (5) of this subsection is maintained by the transferring pharmacy;

(B) the information specified in paragraph (6) of this subsection is maintained by the receiving pharmacy; and

(C) in the event that the patient or patient's agent is unaware of the transfer of the prescription drug order record, the transferring pharmacy must notify the patient or patient's agent of the transfer and must provide the patient or patient's agent with the telephone number of the pharmacy receiving the multiple or bulk prescription drug order records.

(h) Distribution of controlled substances to another registrant. A pharmacy may distribute controlled substances to a practitioner, another pharmacy, or other registrant, without being registered to distribute, under the following conditions.

(1) The registrant to whom the controlled substance is to be distributed is registered under the Controlled Substances Act to dispense that controlled substance.

(2) The total number of dosage units of controlled substances distributed by a pharmacy may not exceed 5.0% of all controlled substances dispensed and distributed by the pharmacy during the 12-month period in which the pharmacy is registered; if at any time it does exceed 5.0%, the pharmacy is required to obtain an additional registration to distribute controlled substances.

(3) If the distribution is for a Schedule III, IV, or V controlled substance, a record shall be maintained that indicates:

(A) the actual date of distribution;

(B) the name, strength, and quantity of controlled substances distributed;

(C) the name, address, and DEA registration number of the distributing pharmacy; and

(D) the name, address, and DEA registration number of the pharmacy, practitioner, or other registrant to whom the controlled substances are distributed.

(4) If the distribution is for a Schedule II controlled substance, the following is applicable.

(A) The pharmacy, practitioner, or other registrant who is receiving the controlled substances shall issue Copy 1 and Copy 2 of a DEA order form (DEA 222) to the distributing pharmacy.

(B) The distributing pharmacy shall:

(i) complete the area on the DEA order form (DEA 222) titled "To Be Filled in by Supplier";

(ii) maintain Copy 1 of the DEA order form (DEA 222) at the pharmacy for two years; and

(iii) forward Copy 2 of the DEA order form (DEA 222) to the Divisional Office of the Drug Enforcement Administration.

(i) Other records. Other records to be maintained by a pharmacy:

(1) a log of the initials or identification codes that will identify each pharmacist, pharmacy technician, and pharmacy technician trainee, who is involved in the dispensing process, in the pharmacy's data processing system, (the initials or identification code shall be unique to ensure that each individual can be identified, i.e., identical initials or identification codes shall not be used). Such log shall be maintained at the pharmacy for at least seven years from the date of the transaction;

(2) Copy 3 of DEA order form (DEA 222) that has been properly dated, initialed, and filed, and all copies of each unaccepted or defective order form and any attached statements or other documents and/or for each order filled using the DEA Controlled Substance Ordering System (CSOS) the original signed order and all linked records for that order;

(3) a copy of the power of attorney to sign DEA 222 order forms (if applicable);

(4) suppliers' invoices of dangerous drugs and controlled substances; a pharmacist shall verify that the controlled drugs listed on the invoices were actually received by clearly recording his/her initials and the actual date of receipt of the controlled substances;

(5) suppliers' credit memos for controlled substances and dangerous drugs;

(6) a copy of inventories required by §291.17 of this title (relating to Inventory Requirements);

(7) reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(8) the Schedule V nonprescription register book;

(9) records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

(10) a copy of any notification required by the Texas Pharmacy Act or the sections in this chapter, including, but not limited to, the following:

(A) reports of theft or significant loss of controlled substances to DEA, Department of Public Safety, and the board;

(B) notifications of a change in pharmacist-in-charge of a pharmacy; and

(C) reports of a fire or other disaster that may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, and disease.

(j) Permission to maintain central records. Any pharmacy that uses a centralized recordkeeping system for invoices and financial data shall comply with the following procedures.

(1) Controlled substance records. Invoices and financial data for controlled substances may be maintained at a central location provided the following conditions are met.

(A) Prior to the initiation of central recordkeeping, the pharmacy submits written notification by registered or certified mail to the divisional director of the Drug Enforcement Administration as required by Title 21, Code of Federal Regulations, §1304.04(a), and submits a copy of this written notification to the Texas State Board of Pharmacy. Unless the registrant is informed by the divisional director of the Drug Enforcement Administration that permission to keep central records is denied, the pharmacy may maintain central records commencing 14 days after receipt of notification by the divisional director.

(B) The pharmacy maintains a copy of the notification required in subparagraph (A) of this paragraph.

(C) The records to be maintained at the central record location shall not include executed DEA order forms, prescription drug orders, or controlled substance inventories, that shall be maintained at the pharmacy.

(2) Dangerous drug records. Invoices and financial data for dangerous drugs may be maintained at a central location.

(3) Access to records. If the records are kept on microfilm, computer media, or in any form requiring special equipment to render the records easily readable, the pharmacy shall provide access to such equipment with the records.

(4) Delivery of records. The pharmacy agrees to deliver all or any part of such records to the pharmacy location within two business days of written request of a board agent or any other authorized official.

(k) Ownership of pharmacy records. For the purposes of these sections, a pharmacy licensed under the Act is the only entity that may legally own and maintain prescription drug records.

(l) Documentation of consultation. When a pharmacist consults a prescriber as described in this section, the pharmacist shall document on the hard copy or in the pharmacy's data processing system associated with the prescription such occurrences and shall include the following information:

(1) date the prescriber was consulted;

(2) name of the person communicating the prescriber's instructions;

(3) any applicable information pertaining to the consultation; and

(4) initials or identification code of the pharmacist performing the consultation clearly recorded for the purpose of identifying the pharmacist who performed the consultation if the information is recorded on the hard copy prescription.

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, 2016.

TRD-201604756
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 305-8028

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SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.74

The Texas State Board of Pharmacy proposes amendments to §291.74, concerning Operational Standards.

The proposed amendments, if adopted, eliminate references to pharmacies operated by management companies; implement provisions of SB 460 regarding notification for a change of location; and remove references to Class C-S pharmacy which are no longer necessary.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure pharmacies are properly licensed.

Written comments on the amendments may be submitted to Allison Vordenbaumen Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-6778. Comments must be received by 5 p.m., October 25, 2016.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551-569, Texas Occupations Code.

§291.74. Operational Standards.

(a) Licensing requirements.

(1) A Class C pharmacy shall register annually or biennially with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application).

[(2) If the institutional pharmacy is owned or operated by a hospital management or consulting firm, the following conditions apply.]

[(A) The pharmacy license application shall list the hospital management or consulting firm as the owner or operator.]

[(B) The hospital management or consulting firm shall obtain DEA and DPS controlled substance registrations that are issued in their name, unless the following occurs:]

[(i) the hospital management or consulting firm and the facility cosign a contractual pharmacy service agreement which assigns overall responsibility for controlled substances to the facility; and]

[(ii) such hospital pharmacy management or consulting firm maintains dual responsibility for the controlled substances.]

(2) [(3)] A Class C pharmacy which changes ownership shall notify the board within 10 days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(3) [(4)] A Class C pharmacy which changes location and/or name shall notify the board [within 10 days] of the change [and file for an amended license] as specified in §291.3 of this title.

(4) [(5)] A Class C pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within 10 days of the change following the procedures in §291.3 of this title.

(5) [(6)] A Class C pharmacy shall notify the board in writing within 10 days of closing, following the procedures in §291.5 of this title (relating to Closing a Pharmacy).

(6) [(7)] A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance and renewal of a license and the issuance of an amended license.

(7) [(8)] A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(8) [(9)] A Class C pharmacy, licensed under the Act, §560.051(a)(3), which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(1) (Community Pharmacy (Class A)) or the Act, §560.051(a)(2) (Nuclear Pharmacy (Class B)), is not required to secure a license for the such other type of pharmacy; provided, however, such licensee is required to comply with the provisions of §291.31 of this title (relating to Definitions), §291.32 of this title (relating to Personnel), §291.33 of this title (relating to Operational Standards), §291.34 of this title (relating to Records), and §291.35 of this title (relating to Official Prescription Records), contained in Community Pharmacy (Class A), or §291.51 of this title (relating to Purpose), §291.52 of this title (relating to Definitions), §291.53 of this title (relating to Personnel), §291.54 of this title (relating to Operational Standards), and §291.55 of this title (relating to Records), contained in Nuclear Pharmacy (Class B), to the extent such sections are applicable to the operation of the pharmacy.

(9) [(10)] A Class C pharmacy engaged in the compounding of non-sterile preparations shall comply with the provisions of §291.131 of this title (relating to Pharmacies Compounding Non-sterile Preparations).

[(11) Prior to August 31, 2014, a Class C pharmacy engaged in the compounding of sterile preparations shall comply with the provisions of §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations).]

(10) [(12)] [Effective August 31, 2014, a] Class C pharmacy personnel shall not compound sterile preparations unless the pharmacy has applied for and obtained a Class C-S pharmacy.

(11) [(13)] A Class C pharmacy engaged in the provision of remote pharmacy services, including storage and dispensing of prescription drugs, shall comply with the provisions of §291.121 of this title (relating to Remote Pharmacy Services).

(12) [(14)] A Class C pharmacy engaged in centralized prescription dispensing and/or prescription drug or medication order processing shall comply with the provisions of §291.123 of this title (relating to Central Prescription Drug or Medication Order Processing) and/or §291.125 of this title (relating to Centralized Prescription Dispensing).

(13) [(15)] A Class C pharmacy with an ongoing clinical pharmacy program that proposes to allow a pharmacy technician to verify the accuracy of work performed by another pharmacy technician relating to the filling of floor stock and unit dose distribution systems for a patient admitted to the hospital if the patient's orders have previously been reviewed and approved by a pharmacist shall make application to the board as follows.

(A) The pharmacist-in-charge must submit an application on a form provided by the board, containing the following information:

(i) name, address, and pharmacy license number;

(ii) name and license number of the pharmacist-in-charge;

(iii) name and registration numbers of the pharmacy technicians;

(iv) anticipated date the pharmacy plans to begin allowing a pharmacy technician to verify the accuracy of work performed by another pharmacy technician;

(v) documentation that the pharmacy has an ongoing clinical pharmacy program; and

(vi) any other information specified on the application.

(B) The pharmacy may not allow a pharmacy technician to check the work of another pharmacy technician until the board has reviewed and approved the application and issued an amended license to the pharmacy.

(C) Every two years, in connection with the application for renewal of the pharmacy license, the pharmacy shall provide updated documentation that the pharmacy continues to have an ongoing clinical pharmacy program as specified in subparagraph (A)(v) of this paragraph.

(14) [(16)] A rural hospital that wishes to allow a pharmacy technician to perform the duties specified in §291.73(e)(2)(D) of this title (relating to Personnel), shall make application to the board as follows.

(A) Prior to allowing a pharmacy technician to perform the duties specified in §291.73(e)(2)(D) of this title, the pharmacist-in-charge must submit an application on a form provided by the board, containing the following information:

(i) name, address, and pharmacy license number;

(ii) name and license number of the pharmacist-in-charge;

(iii) name and registration number of the pharmacy technicians;

(iv) proposed date the pharmacy wishes to start allowing pharmacy technicians to perform the duties specified in §291.73(e)(2)(D) of this title;

(v) documentation that the hospital is a rural hospital with 75 or fewer beds and that the rural hospital is either:

(I) located in a county with a population of 50,000 or less as defined by the United States Census Bureau in the most recent U.S. census; or

(II) designated by the Centers for Medicare and Medicaid Services as a critical access hospital, rural referral center, or sole community hospital; and

(vi) any other information specified on the application.

(B) A rural hospital may not allow a pharmacy technician to perform the duties specified in §291.73(e)(2)(D) of this title until the board has reviewed and approved the application and issued an amended license to the pharmacy.

(C) Every two years in conjunction with the application for renewal of the pharmacy license, the pharmacist-in-charge shall update the application for pharmacy technicians to perform the duties specified in §291.73(e)(2)(D) of this title.

(b) Environment.

(1) General requirements.

(A) The institutional pharmacy shall have adequate space necessary for the storage, compounding, labeling, dispensing, and sterile preparation of drugs prepared in the pharmacy, and additional space, depending on the size and scope of pharmaceutical services.

(B) The institutional pharmacy shall be arranged in an orderly fashion and shall be kept clean. All required equipment shall be clean and in good operating condition.

(C) A sink with hot and cold running water exclusive of restroom facilities shall be available to all pharmacy personnel and shall be maintained in a sanitary condition at all times.

(D) The institutional pharmacy shall be properly lighted and ventilated.

(E) The temperature of the institutional pharmacy shall be maintained within a range compatible with the proper storage of drugs. The temperature of the refrigerator and/or freezer shall be maintained within a range compatible with the proper storage of drugs.

(F) If the institutional pharmacy has flammable materials, the pharmacy shall have a designated area for the storage of flammable materials. Such area shall meet the requirements set by local and state fire laws.

(G) The institutional pharmacy shall store antiseptics, other drugs for external use, and disinfectants separately from internal and injectable medications.

(2) Security requirements.

(A) The institutional pharmacy shall be enclosed and capable of being locked by key, combination or other mechanical or electronic means, so as to prohibit access by unauthorized individuals. Only individuals authorized by the pharmacist-in-charge shall enter the pharmacy.

(B) Each pharmacist on duty shall be responsible for the security of the institutional pharmacy, including provisions for adequate safeguards against theft or diversion of dangerous drugs, controlled substances, and records for such drugs.

(C) The institutional pharmacy shall have locked storage for Schedule II controlled substances and other drugs requiring additional security.

(c) Equipment and supplies. Institutional pharmacies distributing medication orders shall have the following equipment:

(1) data processing system including a printer or comparable equipment; and

(2) refrigerator and/or freezer and a system or device (e.g., thermometer) to monitor the temperature to ensure that proper storage requirements are met.

(d) Library. A reference library shall be maintained that includes the following in hard-copy or electronic format and that pharmacy personnel shall be capable of accessing at all times:

(1) current copies of the following:

(A) Texas Pharmacy Act and rules;

(B) Texas Dangerous Drug Act and rules;

(C) Texas Controlled Substances Act and regulations; and

(D) Federal Controlled Substances Act and regulations (or official publication describing the requirements of the Federal Controlled Substances Act and regulations);

(2) at least one current or updated reference from each of the following categories:

(A) drug interactions. A reference text on drug interactions, such as Drug Interaction Facts. A separate reference is not required if other references maintained by the pharmacy contain drug interaction information including information needed to determine severity or significance of the interaction and appropriate recommendations or actions to be taken;

(B) a general information reference text, such as:

(i) Facts and Comparisons with current supplements;

(ii) United States Pharmacopeia Dispensing Information Volume I (Drug Information for the Healthcare Provider);

(iii) AHFS Drug Information with current supplements;

(iv) Remington's Pharmaceutical Sciences; or

(v) Clinical Pharmacology;

(3) a current or updated reference on injectable drug products, such as Handbook of Injectable Drugs;

(4) basic antidote information and the telephone number of the nearest regional poison control center;

(5) metric-apothecary weight and measure conversion charts.

(e) Absence of a pharmacist.

(1) Medication orders.

(A) In facilities with a full-time pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the facility when the pharmacy is closed, the following is applicable.

(i) Prescription drugs and devices only in sufficient quantities for immediate therapeutic needs may be removed from the institutional pharmacy.

(ii) Only a designated licensed nurse or practitioner may remove such drugs and devices.

(iii) A record shall be made at the time of withdrawal by the authorized person removing the drugs and devices. The record shall contain the following information:

(I) name of patient;

(II) name of device or drug, strength, and dosage form;

(III) dose prescribed;

(IV) quantity taken;

(V) time and date; and

(VI) signature (first initial and last name or full signature) or electronic signature of person making withdrawal.

(iv) The original or direct copy of the medication order may substitute for such record, providing the medication order meets all the requirements of clause (iii) of this subparagraph.

(v) The pharmacist shall verify the withdrawal of drugs from the pharmacy and perform a drug regimen review as specified in subsection (g)(1)(B) of this section as soon as practical, but in no event more than 72 hours from the time of such withdrawal.

(B) In facilities with a part-time or consultant pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the facility when the pharmacist is not on duty, or when the pharmacy is closed, the following is applicable.

(i) Prescription drugs and devices only in sufficient quantities for therapeutic needs may be removed from the institutional pharmacy.

(ii) Only a designated licensed nurse or practitioner may remove such drugs and devices.

(iii) A record shall be made at the time of withdrawal by the authorized person removing the drugs and devices; the record shall meet the same requirements as specified in subparagraph (A)(iii) and (iv) of this paragraph.

(iv) The pharmacist shall verify the withdrawal of drugs from the pharmacy and perform a drug regimen review as specified in subsection (g)(1)(B) of this section after a reasonable interval, but in no event may such interval exceed seven days.

(2) Floor stock. In facilities using a floor stock method of drug distribution, the following is applicable.

(A) Prescription drugs and devices may be removed from the pharmacy only in the original manufacturer's container or prepackaged container.

(B) Only a designated licensed nurse or practitioner may remove such drugs and devices.

(C) A record shall be made at the time of withdrawal by the authorized person removing the drug or device; the record shall contain the following information:

(i) name of the drug, strength, and dosage form;

(ii) quantity removed;

(iii) location of floor stock;

(iv) date and time; and

(v) signature (first initial and last name or full signature) or electronic signature of person making the withdrawal.

(D) The pharmacist shall verify the withdrawal of drugs from the pharmacy after a reasonable interval, but in no event may such interval exceed seven days.

(3) Rural hospitals. In rural hospitals when a pharmacy technician performs the duties listed in §291.73(e)(2)(D) of this title, the following is applicable:

(A) the pharmacy technician shall make a record of all drugs distributed from the pharmacy. The record shall be maintained in the pharmacy for two years and contain the following information:

(i) name of patient or location where floor stock is distributed;

(ii) name of device or drug, strength, and dosage form;

(iii) dose prescribed or ordered;

(iv) quantity distributed;

(v) time and date of the distribution; and

(vi) signature (first initial and last name or full signature) or electronic signature of nurse or practitioner that verified the actions of the pharmacy technician.

(B) The original or direct copy of the medication order may substitute for the record specified in subparagraph (A) of this paragraph, provided the medication order meets all the requirements of subparagraph (A) of this paragraph.

(C) The pharmacist shall:

(i) verify and document the verification of all distributions made from the pharmacy in the absence of a pharmacist as soon as practical, but in no event more than seven (7) days from the time of such distribution;

(ii) perform a drug regimen review for all medication orders as specified in subsection (g)(1)(B) of this section as soon as practical, but in no event more than seven (7) days from the time of such distribution and document such verification including any discrepancies noted by the pharmacist;

(iii) review any discrepancy noted by the pharmacist with the pharmacy technician(s) and make any change in procedures or processes necessary to prevent future problems; and

(iv) report any adverse events that have a potential for harm to a patient to the appropriate committee of the hospital that reviews adverse events.

(f) Drugs.

(1) Procurement, preparation and storage.

(A) The pharmacist-in-charge shall have the responsibility for the procurement and storage of drugs, but may receive input from other appropriate staff of the facility, relative to such responsibility.

(B) The pharmacist-in-charge shall have the responsibility for determining specifications of all drugs procured by the facility.

(C) Institutional pharmacies may not sell, purchase, trade or possess prescription drug samples, unless the pharmacy meets the requirements as specified in §291.16 of this title (relating to Samples).

(D) All drugs shall be stored at the proper temperatures, as defined in the USP/NF and in §291.15 of this title (relating to Storage of Drugs).

(E) Any drug bearing an expiration date may not be distributed beyond the expiration date of the drug.

(F) Outdated and other unusable drugs shall be removed from stock and shall be quarantined together until such drugs are disposed of properly.

(2) Formulary.

(A) A formulary shall be developed by the facility committee performing the pharmacy and therapeutics function for the facility. For the purpose of this section, a formulary is a compilation of pharmaceuticals that reflects the current clinical judgment of a facility's medical staff.

(B) The pharmacist-in-charge or pharmacist designated by the pharmacist-in-charge shall be a full voting member of the committee performing the pharmacy and therapeutics function for the facility, when such committee is performing the pharmacy and therapeutics function.

(C) A practitioner may grant approval for pharmacists at the facility to interchange, in accordance with the facility's formulary, for the prescribed drugs on the practitioner's medication orders provided:

(i) the pharmacy and therapeutics committee has developed a formulary;

(ii) the formulary has been approved by the medical staff committee of the facility;

(iii) there is a reasonable method for the practitioner to override any interchange; and

(iv) the practitioner authorizes pharmacists in the facility to interchange on his/her medication orders in accordance with the facility's formulary through his/her written agreement to abide by the policies and procedures of the medical staff and facility.

(3) Prepackaging of drugs.

(A) Distribution within a facility.

(i) Drugs may be prepackaged in quantities suitable for internal distribution by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(ii) The label of a prepackaged unit shall indicate:

(I) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(II) facility's unique lot number;

(III) expiration date based on currently available literature; and

(IV) quantity of the drug, if the quantity is greater than one.

(iii) Records of prepackaging shall be maintained to show:

(I) name of the drug, strength, and dosage form;

(II) facility's unique lot number;

(III) manufacturer or distributor;

(IV) manufacturer's lot number;

(V) expiration date;

(VI) quantity per prepackaged unit;

(VII) number of prepackaged units;

(VIII) date packaged;

(IX) name, initials, or electronic signature of the prepacker; and

(X) name, initials, or electronic signature of the responsible pharmacist.

(iv) Stock packages, prepackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(B) Distribution to other Class C (Institutional) pharmacies under common ownership.

(i) Drugs may be prepackaged in quantities suitable for distribution to other Class C (Institutional) pharmacies under common ownership by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(ii) The label of a prepackaged unit shall indicate:

(I) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(II) facility's unique lot number;

(III) expiration date based on currently available literature;

(IV) quantity of the drug, if the quantity is greater than one; and

(V) name of the facility responsible for prepackaging the drug.

(iii) Records of prepackaging shall be maintained to show:

(I) name of the drug, strength, and dosage form;

(II) facility's unique lot number;

(III) manufacturer or distributor;

(IV) manufacturer's lot number;

(V) expiration date;

(VI) quantity per prepackaged unit;

(VII) number of prepackaged units;

(VIII) date packaged;

(IX) name, initials, or electronic signature of the prepacker;

(X) name, initials, or electronic signature of the responsible pharmacist; and

(XI) name of the facility receiving the prepackaged drug.

(iv) Stock packages, prepackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(v) The pharmacy shall have written procedure for the recall of any drug prepackaged for another Class C Pharmacy under common ownership. The recall procedures shall require:

(I) notification to the pharmacy to which the prepackaged drug was distributed;

(II) quarantine of the product if there is a suspicion of harm to a patient;

(III) a mandatory recall if there is confirmed or probable harm to a patient; and

(IV) notification to the board if a mandatory recall is instituted.

(4) Sterile preparations prepared in a location other than the pharmacy. A distinctive supplementary label shall be affixed to the container of any admixture. The label shall bear at a minimum:

(A) patient's name and location, if not immediately administered;

(B) name and amount of drug(s) added;

(C) name of the basic solution;

(D) name or identifying code of person who prepared admixture; and

(E) expiration date of solution.

(5) Distribution.

(A) Medication orders.

(i) Drugs may be given to patients in facilities only on the order of a practitioner. No change in the order for drugs may be made without the approval of a practitioner except as authorized by the practitioner in compliance with paragraph (2)(C) of this subsection.

(ii) Drugs may be distributed only from the original or a direct copy of the practitioner's medication order.

(iii) Pharmacy technicians and pharmacy technician trainees may not receive verbal medication orders.

(iv) Institutional pharmacies shall be exempt from the labeling provisions and patient notification requirements of §562.006 and §562.009 of the Act, as respects drugs distributed pursuant to medication orders.

(B) Procedures.

(i) Written policies and procedures for a drug distribution system (best suited for the particular institutional pharmacy) shall be developed and implemented by the pharmacist-in-charge, with the advice of the committee performing the pharmacy and therapeutics function for the facility.

(ii) The written policies and procedures for the drug distribution system shall include, but not be limited to, procedures regarding the following:

(I) pharmaceutical care services;

(II) handling, storage and disposal of cytotoxic drugs and waste;

(III) disposal of unusable drugs and supplies;

(IV) security;

(V) equipment;

(VI) sanitation;

(VII) reference materials;

(VIII) drug selection and procurement;

(IX) drug storage;

(X) controlled substances;

(XI) investigational drugs, including the obtaining of protocols from the principal investigator;

(XII) prepackaging and manufacturing;

(XIII) stop orders;

(XIV) reporting of medication errors, adverse drug reactions/events, and drug product defects;

(XV) physician orders;

(XVI) floor stocks;

(XVII) drugs brought into the facility;

(XVIII) furlough medications;

(XIX) self-administration;

(XX) emergency drug supply;

(XXI) formulary;

(XXII) monthly inspections of nursing stations and other areas where drugs are stored, distributed, administered or dispensed;

(XXIII) control of drug samples;

(XXIV) outdated and other unusable drugs;

(XXV) routine distribution of patient medication;

(XXVI) preparation and distribution of sterile preparations;

(XXVII) handling of medication orders when a pharmacist is not on duty;

(XXVIII) use of automated compounding or counting devices;

(XXIX) use of data processing and direct imaging systems;

(XXX) drug administration to include infusion devices and drug delivery systems;

(XXXI) drug labeling;

(XXXII) recordkeeping;

(XXXIII) quality assurance/quality control;

(XXXIV) duties and education and training of professional and nonprofessional staff;

(XXXV) procedures for a pharmacy technician to verify the accuracy of work performed by another pharmacy technician, if applicable;

(XXXVI) operation of the pharmacy when a pharmacist in not on-site; and

(XXXVII) emergency preparedness plan, to include continuity of patient therapy and public safety.

(6) Discharge Prescriptions. Discharge prescriptions must be dispensed and labeled in accordance with §291.33 of this title (relating to Operational Standards) except that certain medications packaged in unit-of-use containers, such as metered-dose inhalers, insulin pens, topical creams or ointments, or ophthalmic or otic preparation that are administered to the patient during the time the patient was a patient in the hospital, may be provided to the patient upon discharge provided the pharmacy receives a discharge order and the product bears a label containing the following information:

(A) name of the patient;

(B) name and strength of the medication;

(C) name of the prescribing or attending practitioner;

(D) directions for use;

(E) duration of therapy (if applicable); and

(F) name and telephone number of the pharmacy.

(g) Pharmaceutical care services.

(1) The pharmacist-in-charge shall assure that at least the following pharmaceutical care services are provided to patients of the facility.

(A) Drug utilization review. A systematic ongoing process of drug utilization review shall be developed in conjunction with the medical staff to increase the probability of desired patient outcomes and decrease the probability of undesired outcomes from drug therapy.

(B) Drug regimen review.

(i) For the purpose of promoting therapeutic appropriateness, a pharmacist shall evaluate medication orders and patient medication records for:

(I) known allergies;

(II) rational therapy--contraindications;

(III) reasonable dose and route of administration;

(IV) reasonable directions for use;

(V) duplication of therapy;

(VI) drug-drug interactions;

(VII) drug-food interactions;

(VIII) drug-disease interactions;

(IX) adverse drug reactions;

(X) proper utilization, including overutilization or underutilization; and

(XI) clinical laboratory or clinical monitoring methods to monitor and evaluate drug effectiveness, side effects, toxicity, or adverse effects, and appropriateness to continued use of the drug in its current regimen.

(ii) The drug regimen review shall be conducted on a prospective basis when a pharmacist is on duty, except for an emergency order, and on a retrospective basis as specified in subsection (e)(1) of this section when a pharmacist is not on duty.

(iii) Any questions regarding the order must be resolved with the prescriber and a written notation of these discussions made and maintained.

(iv) The drug regimen review may be conducted by remotely accessing the pharmacy's electronic data base from outside the pharmacy by an individual Texas licensed pharmacist employee of the pharmacy, provided the pharmacy establishes controls to protect the privacy of the patient and the security of confidential records.

(C) Education. The pharmacist-in-charge in cooperation with appropriate multi-disciplinary staff of the facility shall develop policies that assure that:

(i) the patient and/or patient's caregiver receives information regarding drugs and their safe and appropriate use; and

(ii) health care providers are provided with patient specific drug information.

(D) Patient monitoring. The pharmacist-in-charge in cooperation with appropriate multi-disciplinary staff of the facility shall develop policies to ensure that the patient's response to drug therapy is monitored and conveyed to the appropriate health care provider.

(2) Other pharmaceutical care services which may be provided by pharmacists in the facility include, but are not limited to, the following:

(A) managing drug therapy as delegated by a practitioner as allowed under the provisions of the Medical Practice Act;

(B) administering immunizations and vaccinations under written protocol of a physician;

(C) managing patient compliance programs;

(D) providing preventative health care services; and

(E) providing case management of patients who are being treated with high-risk or high-cost drugs, or who are considered "high risk" due to their age, medical condition, family history, or related concern.

(h) Emergency rooms.

(1) During the times a pharmacist is on duty in the facility any prescription drugs supplied to an outpatient, including emergency department patients, may only be dispensed by a pharmacist.

(2) When a pharmacist is not on duty in the facility, the following is applicable for supplying prescription drugs to be taken home by the patient for self-administration from the emergency room. If the patient has been admitted to the emergency room and assessed by a practitioner at the hospital, the following procedures shall be observed in supplying prescription drugs from the emergency room.

(A) Dangerous drugs and/or controlled substances may only be supplied in accordance with the system of control and accountability for dangerous drugs and/or controlled substances administered or supplied from the emergency room; such system shall be developed and supervised by the pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge.

(B) Only dangerous drugs and/or controlled substances listed on the emergency room drug list may be supplied; such list shall be developed by the pharmacist-in-charge and the facility's emergency department committee (or like group or person responsible for policy in that department) and shall consist of dangerous drugs and/or controlled substances of the nature and type to meet the immediate needs of emergency room patients.

(C) Dangerous drugs and/or controlled substances may only be supplied in prepackaged quantities not to exceed a 72-hour supply in suitable containers and appropriately prelabeled (including necessary auxiliary labels) by the institutional pharmacy.

(D) At the time of delivery of the dangerous drugs and/or controlled substances, the practitioner or licensed nurse under the supervision of a practitioner shall appropriately complete the label with at least the following information:

(i) name, address, and phone number of the facility;

(ii) date supplied;

(iii) name of practitioner;

(iv) name of patient;

(v) directions for use;

(vi) brand name and strength of the dangerous drug or controlled substance; or if no brand name, then the generic name, strength, and the name of the manufacturer or distributor of the dangerous drug or controlled substance;

(vii) quantity supplied; and

(viii) unique identification number.

(E) The practitioner, or a licensed nurse under the supervision of the practitioner, shall give the appropriately labeled, prepackaged drug to the patient and explain the correct use of the drug.

(F) A perpetual record of dangerous drugs and/or controlled substances supplied from the emergency room shall be maintained in the emergency room. Such record shall include the following:

(i) date supplied;

(ii) practitioner's name;

(iii) patient's name;

(iv) brand name and strength of the dangerous drug or controlled substance; or if no brand name, then the generic name, strength, and the name of the manufacturer or distributor of the dangerous drug or controlled substance;

(v) quantity supplied; and

(vi) unique identification number.

(G) The pharmacist-in-charge, or staff pharmacist designated by the pharmacist-in-charge, shall verify the correctness of this record at least once every seven days.

(i) Radiology departments.

(1) During the times a pharmacist is on duty, any prescription drugs dispensed to an outpatient, including radiology department patients, may only be dispensed by a pharmacist.

(2) When a pharmacist is not on duty, the following procedures shall be observed in supplying prescription drugs from the radiology department.

(A) Prescription drugs may only be supplied to patients who have been scheduled for an x-ray examination at the facility.

(B) Prescription drugs may only be supplied in accordance with the system of control and accountability for prescription drugs administered or supplied from the radiology department and supervised by the pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge.

(C) Only prescription drugs listed on the radiology drug list may be supplied; such list shall be developed by the pharmacist-in-charge and the facility's radiology committee (or like group or persons responsible for policy in that department) and shall consist of drugs for the preparation of a patient for a radiological procedure.

(D) Prescription drugs may only be supplied in prepackaged quantities in suitable containers and prelabeled by the institutional pharmacy with the following information:

(i) name and address of the facility;

(ii) directions for use;

(iii) name and strength of the prescription drug--if generic name, the name of the manufacturer or distributor of the prescription drug;

(iv) quantity;

(v) facility's lot number and expiration date; and

(vi) appropriate ancillary label(s).

(E) At the time of delivery of the prescription drug, the practitioner or practitioner's agent shall complete the label with the following information:

(i) date supplied;

(ii) name of physician;

(iii) name of patient; and

(iv) unique identification number.

(F) The practitioner or practitioner's agent shall give the appropriately labeled, prepackaged prescription drug to the patient.

(G) A perpetual record of prescription drugs supplied from the radiology department shall be maintained in the radiology department. Such records shall include the following:

(i) date supplied;

(ii) practitioner's name;

(iii) patient's name;

(iv) brand name and strength of the prescription drug; or if no brand name, then the generic name, strength, dosage form, and the name of the manufacturer or distributor of the prescription drug;

(v) quantity supplied; and

(vi) unique identification number.

(H) The pharmacist-in-charge, or a pharmacist designated by the pharmacist-in-charge, shall verify the correctness of this record at least once every seven days.

(j) Automated devices and systems.

(1) Automated compounding or counting devices. If a pharmacy uses automated compounding or counting devices:

(A) the pharmacy shall have a method to calibrate and verify the accuracy of the automated compounding or counting device and document the calibration and verification on a routine basis;

(B) the devices may be loaded with unlabeled drugs only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist;

(C) the label of an automated compounding or counting device container shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(D) records of loading unlabeled drugs into an automated compounding or counting device shall be maintained to show:

(i) name of the drug, strength, and dosage form;

(ii) manufacturer or distributor;

(iii) manufacturer's lot number;

(iv) expiration date;

(v) date of loading;

(vi) name, initials, or electronic signature of the person loading the automated compounding or counting device; and

(vii) signature or electronic signature of the responsible pharmacist; and

(E) the automated compounding or counting device shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature to the record specified in subparagraph (D) of this paragraph.

(2) Automated medication supply systems.

(A) Authority to use automated medication supply systems. A pharmacy may use an automated medication supply system to fill medication orders provided that:

(i) the pharmacist-in-charge is responsible for the supervision of the operation of the system;

(ii) the automated medication supply system has been tested by the pharmacy and found to dispense accurately. The pharmacy shall make the results of such testing available to the Board upon request; and

(iii) the pharmacy will make the automated medication supply system available for inspection by the board for the purpose of validating the accuracy of the system.

(B) Quality assurance program. A pharmacy which uses an automated medication supply system to fill medication orders shall operate according to a written program for quality assurance of the automated medication supply system which:

(i) requires continuous monitoring of the automated medication supply system; and

(ii) establishes mechanisms and procedures to test the accuracy of the automated medication supply system at least every six months and whenever any upgrade or change is made to the system and documents each such activity.

(C) Policies and procedures of operation.

(i) When an automated medication supply system is used to store or distribute medications for administration pursuant to medication orders, it shall be operated according to written policies and procedures of operation. The policies and procedures of operation shall establish requirements for operation of the automated medication supply system and shall describe policies and procedures that:

(I) include a description of the policies and procedures of operation;

(II) provide for a pharmacist's review and approval of each original or new medication order prior to withdrawal from the automated medication supply system:

(-a-) before the order is filled when a pharmacist is on duty except for an emergency order;

(-b-) retrospectively within 72 hours in a facility with a full-time pharmacist when a pharmacist is not on duty at the time the order is made; or

(-c-) retrospectively within 7 days in a facility with a part-time or consultant pharmacist when a pharmacist is not on duty at the time the order is made;

(III) provide for access to the automated medication supply system for stocking and retrieval of medications which is limited to licensed healthcare professionals, pharmacy technicians, or pharmacy technician trainees acting under the supervision of a pharmacist;

(IV) provide that a pharmacist is responsible for the accuracy of the restocking of the system. The actual restocking may be performed by a pharmacy technician or pharmacy technician trainee;

(V) provide for an accountability record to be maintained which documents all transactions relative to stocking and removing medications from the automated medication supply system;

(VI) require a prospective or retrospective drug regimen review is conducted as specified in subsection (g) of this section; and

(VII) establish and make provisions for documentation of a preventative maintenance program for the automated medication supply system.

(ii) A pharmacy which uses an automated medication supply system to fill medication orders shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(D) Automated medication supply systems used for storage and recordkeeping of medications located outside of the pharmacy department (e.g., Pyxis). A pharmacy technician or pharmacy technician trainee may restock an automated medication supply system located outside of the pharmacy department with prescription drugs provided:

(i) prior to distribution of the prescription drugs a pharmacist verifies that the prescription drugs pulled to stock the automated supply system match the list of prescription drugs generated by the automated medication supply system except as specified in §291.73(e)(2)(C)(ii) of this title; or

(ii) all of the following occur:

(I) the prescription drugs to restock the system are labeled and verified with a machine readable product identifier, such as a barcode;

(II) either:

(-a-) the drugs are in tamper evident product packaging, packaged by an FDA registered repackager or manufacture, that is shipped to the pharmacy; or

(-b-) if any manipulation of the product occurs in the pharmacy prior to restocking, such as repackaging or extemporaneous compounding, the product must be checked by a pharmacist; and

(III) quality assurance audits are conducted according to established policies and procedures to ensure accuracy of the process.

(E) Recovery Plan. A pharmacy which uses an automated medication supply system to store or distribute medications for administration pursuant to medication orders shall maintain a written plan for recovery from a disaster or any other situation which interrupts the ability of the automated medication supply system to provide services necessary for the operation of the pharmacy. The written plan for recovery shall include:

(i) planning and preparation for maintaining pharmacy services when an automated medication supply system is experiencing downtime;

(ii) procedures for response when an automated medication supply system is experiencing downtime;

(iii) procedures for the maintenance and testing of the written plan for recovery; and

(iv) procedures for notification of the Board and other appropriate agencies whenever an automated medication supply system experiences downtime for more than two days of operation or a period of time which significantly limits the pharmacy's ability to provide pharmacy services.

(3) Verification of medication orders prepared by the pharmacy department through the use of an automated medication supply system. A pharmacist must check drugs prepared pursuant to medication orders to ensure that the drug is prepared for distribution accurately as prescribed. This paragraph does not apply to automated medication supply systems used for storage and recordkeeping of medications located outside of the pharmacy department.

(A) This check shall be considered accomplished if:

(i) a check of the final product is conducted by a pharmacist after the automated system has completed preparation of the medication order and prior to delivery to the patient; or

(ii) the following checks are conducted by a pharmacist:

(I) if the automated medication supply system contains unlabeled stock drugs, a pharmacist verifies that those drugs have been accurately stocked; and

(II) a pharmacist checks the accuracy of the data entry of each original or new medication order entered into the automated medication supply system before the order is filled.

(B) If the final check is accomplished as specified in subparagraph (A)(ii) of this paragraph, the following additional requirements must be met.

(i) The medication order preparation process must be fully automated from the time the pharmacist releases the medication order to the automated system until a completed medication order, ready for delivery to the patient, is produced.

(ii) The pharmacy has conducted initial testing and has a continuous quality assurance program which documents that the automated medication supply system dispenses accurately as specified in paragraph (2)(A) and (B) of this subsection.

(iii) The automated medication supply system documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (A)(ii) of this paragraph; and

(II) the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist or pharmacy technician or pharmacy technician trainee who performs any other portion of the medication order preparation process.

(iv) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated medication supply system at least every month rather than every six months as specified in paragraph (2)(B) of this subsection.

(4) Automated checking device.

(A) For the purpose of this subsection, an automated checking device is a fully automated device which confirms, after a drug is prepared for distribution but prior to delivery to the patient, that the correct drug and strength has been labeled with the correct label for the correct patient.

(B) The final check of a drug prepared pursuant to a medication order shall be considered accomplished using an automated checking device provided:

(i) a check of the final product is conducted by a pharmacist prior to delivery to the patient or the following checks are performed by a pharmacist:

(I) the prepackaged drug used to fill the order is checked by a pharmacist who verifies that the drug is labeled and packaged accurately; and

(II) a pharmacist checks the accuracy of each original or new medication order.

(ii) the medication order is prepared, labeled, and made ready for delivery to the patient in compliance with Class C (Institutional) Pharmacy rules; and

(iii) prior to delivery to the patient:

(I) the automated checking device confirms that the correct drug and strength has been labeled with the correct label for the correct patient; and

(II) a pharmacist performs all other duties required to ensure that the medication order has been prepared safely and accurately as prescribed.

(C) If the final check is accomplished as specified in subparagraph (B) of this paragraph, the following additional requirements must be met.

(i) The pharmacy has conducted initial testing of the automated checking device and has a continuous quality assurance program which documents that the automated checking device accurately confirms that the correct drug and strength has been labeled with the correct label for the correct patient.

(ii) The pharmacy documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (B)(i) of this paragraph; and

(II) the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist, pharmacy technician, or pharmacy technician trainee who performs any other portion of the medication order preparation process.

(iii) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated checking device at least monthly.

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, 2016.

TRD-201604757
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 305-8028

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SUBCHAPTER H. OTHER CLASSES OF PHARMACY

22 TAC §291.155

The Texas State Board of Pharmacy proposes amendments to §291.155, concerning Limited Prescription Delivery Pharmacy (Class H).

The proposed amendments, if adopted, correct grammar and clarify that a licensed Class H pharmacy may continue to operate after a Class A or Class C pharmacy obtains a license in the county.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be ensuring that pharmacies are properly licensed.

Written comments on the amendments and new rule may be submitted to Allison Vordenbaumen Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-6778. Comments must be received by 5:00 p.m., October 25, 2016.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.155. Limited Prescription Delivery Pharmacy (Class H).

(a) Purpose.

(1) The purpose of this section is to provide standards for a limited prescription delivery pharmacy.

(2) Any facility established for the primary purpose of limited prescription delivery by a Class A pharmacy shall be licensed as a Class H pharmacy under the Act. A Class H pharmacy shall not store bulk drugs[,] or dispense a prescription drug order.

(3) A Class H pharmacy may deliver prescription drug orders for dangerous drugs. A Class H pharmacy may not deliver prescription drug orders for controlled substances.

(b) Definitions. Any term not defined in this chapter shall have the definition set out in the Act, §551.003.

(c) Personnel.

(1) Pharmacist-in-charge.

(A) General. Each Class H pharmacy shall have one pharmacist-in-charge who is employed or under written agreement, at least on a part-time basis, but may be employed on a full-time basis, and who may be the pharmacist-in-charge for more than one limited prescription delivery pharmacy.

(B) Responsibilities. The pharmacist-in-charge shall have responsibility for the practice of pharmacy at the pharmacy for which he or she is the pharmacist-in-charge. The pharmacist-in-charge may advise the owner on administrative or operational concerns. The pharmacist-in-charge shall have responsibility for, at a minimum, the following:

(i) educating [~~education~~] and training [~~of~~] pharmacy technicians and pharmacy technician trainees;

(ii) maintaining records of all transactions of the Class H pharmacy required by applicable state and federal laws and sections;

(iii) adhering [~~adherence~~] to policies and procedures regarding the maintenance of records; and

(iv) legally operating [~~legal operation of~~] the pharmacy, including meeting all inspection and other requirements of all state and federal laws or sections governing the practice of pharmacy.

(2) Owner. The owner of a Class H pharmacy shall have responsibility for all administrative and operational functions of the pharmacy. The pharmacist-in-charge may advise the owner on administrative and operational concerns. The owner shall have responsibility for, at a minimum, the following, and if the owner is not a Texas licensed pharmacist, the owner shall consult with the pharmacist-in-charge or another Texas licensed pharmacist:

(A) providing the pharmacy with the necessary equipment and resources commensurate with its level and type of practice; and

(B) establishing [~~establishment of~~] policies and procedures regarding maintenance, storage, and retrieval of records in compliance with state and federal requirements.

(3) Pharmacists.

(A) The pharmacist-in-charge shall be assisted by sufficient number of additional licensed pharmacists as may be required to operate the Class H pharmacy competently, safely, and adequately to meet the needs of the patients of the pharmacy.

(B) All pharmacists shall assist the pharmacist-in-charge in meeting his or her responsibilities.

(C) Pharmacists shall be responsible for any delegated act performed by the pharmacy technicians under his or her supervision.

(4) Pharmacy Technicians and Pharmacy Technician Trainees.

(A) General. All pharmacy technicians and pharmacy technician trainees shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician and Pharmacy Technician Trainee Training).

(B) Duties. Duties include:

(i) delivering [~~delivery of~~] previously verified prescription drug orders to a patient or patient's agent provided a record of prescriptions delivered is maintained; and

(ii) maintaining pharmacy records.

(5) Identification of pharmacy personnel. All pharmacy personnel shall be identified as follows:[.]

(A) Pharmacy technicians. All pharmacy technicians shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician, or a certified pharmacy technician, if the technician maintains current certification with

the Pharmacy Technician Certification Board or any other entity providing an examination approved by the board.

(B) Pharmacy technician trainees. All pharmacy technician trainees shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician trainee.

(C) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist intern.

(D) Pharmacists. All pharmacists shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist.

(d) Operational Standards.

(1) General requirements. A Class A or Class E Pharmacy may outsource limited prescription delivery to a Class H pharmacy provided the pharmacies have entered into a written contract or agreement which outlines the services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with federal and state laws and regulations.

(2) Licensing requirements.

(A) A Class H pharmacy shall register with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application).

(B) A Class H pharmacy must be owned by a hospital district and located in a county without another pharmacy. If a Class A or Class C pharmacy is established in a county in which a Class H pharmacy has been located under this section, the Class H pharmacy may continue to operate in that county.

(C) A Class H pharmacy that [~~which~~] changes ownership shall notify the board within 10 days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(D) A Class H pharmacy that [~~which~~] changes location and/or name shall notify the board of the change [~~within 10 days~~] and file for an amended license as specified in §291.3 of this title.

(E) A Class H pharmacy shall notify the board in writing within 10 days of closing, following the procedures in §291.5 of this title (relating to Closing a Pharmacy).

(F) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for issuance and renewal of a license and the issuance of an amended license. However, a pharmacy operated by the state or a political subdivision of the state that qualifies for a Class H license is not required to pay a fee to obtain a license.

(G) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(3) Environment.

(A) General requirements.

(i) The pharmacy shall have a designated area for the storage of previously verified prescription drug orders.

(ii) The pharmacy shall be arranged in an orderly fashion and kept clean.

(iii) A sink with hot and cold running water shall be available to all pharmacy personnel and shall be maintained in a sanitary condition at all times.

(B) Security.

(i) Only authorized personnel may have access to storage areas for dangerous drugs.

(ii) When a pharmacist, pharmacy technician or pharmacy technician trainee is not present all storage areas for dangerous drugs devices shall be locked by key, combination, or other mechanical or electronic means, so as to prohibit access by unauthorized individuals.

(iii) The pharmacist-in-charge shall be responsible for the security of all storage areas for dangerous drugs including provisions for adequate safeguards against theft or diversion of dangerous drugs, and records for such drugs.

(iv) Housekeeping and maintenance duties shall be carried out in the pharmacy, while the pharmacist-in-charge, consultant pharmacist, staff pharmacist, or pharmacy technician/trainee is on the premises.

(4) Library. A reference library shall be maintained that [~~which~~] includes current copies of the following in hard copy or electronic format:

(A) Texas Pharmacy Act and rules;

(B) Texas Dangerous Drug Act;

(C) at least one current or updated patient information reference such as:

(i) United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient); or

(ii) a reference text or information leaflets which provide patient information; and

(D) basic antidote information and the telephone number of the nearest Regional Poison Control Center.

(5) Delivery of Drugs.

(A) The pharmacist-in-charge, consultant pharmacist, staff pharmacist, pharmacy technician, or pharmacy technician trainee must be present at the pharmacy to deliver prescriptions.

(B) Prescriptions for controlled substances may not be stored or delivered by the pharmacy.

(C) Prescriptions may be stored at the pharmacy for no more than 15 days. If prescriptions are not picked up by the patient, the medications are to be destroyed utilizing a reverse distribution service.

(D) The pharmacist-in-charge, consultant pharmacist, or staff pharmacist shall personally visit the pharmacy on at least a weekly basis and conduct monthly audits of prescriptions received and delivered by the pharmacy.

(e) Records.

(1) Every record required to be kept under the provisions this section shall be:

(A) kept by the pharmacy and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy.

If the pharmacy maintains the records in an electronic format, the requested records must be provided in a mutually agreeable electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) A record of on-site visits by the pharmacist-in-charge, consultant pharmacist, or staff pharmacist shall be maintained and include the following information:

(A) date of the visit;

(B) pharmacist's evaluation of findings; and

(C) signature of the visiting pharmacist.

(3) Records of prescription drug orders delivered to the Class H pharmacy shall include:

(A) patient name;

(B) name and quantity of drug delivered;

(C) name of pharmacy and address delivering the prescription drug order; and

(D) date received at the Class H pharmacy.

(4) Records of drugs delivered to a patient or patient's agent shall include:

(A) patient name;

(B) name, signature, or electronic signature of the person who picks up the prescription drug;

(C) date delivered; and

(D) the name of the drug and quantity delivered.

(5) Ownership of pharmacy records. For the purposes of these sections, a pharmacy licensed under the Act is the only entity that [~~which~~] may legally own and maintain prescription drug records.

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, 2016.

TRD-201604758
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 305-8028

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CHAPTER 295. PHARMACISTS

22 TAC §295.14

The Texas State Board of Pharmacy proposes new §295.14, concerning Dispensing of Opioid Antagonist by Pharmacist.

The proposed new rule, if adopted, implements SB 1462, passed during the 2015 Texas Legislative Session allowing pharmacists to dispense naloxone to individuals under a standing order from a physician.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the new rule will be to ensure consumers are able to receive naloxone under a standing order.

Written comments on the new rule may be submitted to Allison Vordenbaumen Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas, 78701, FAX (512) 305-6778. Comments must be received by 5:00 p.m., October 25, 2016.

The new rule is proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the new rule: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§295.14. Dispensing of Opioid Antagonist by Pharmacist.

(a) Purpose. The purpose of this section is to provide standards for pharmacists engaged in the dispensing of opioid antagonists as authorized in Chapter 483 of the Health and Safety Code.

(b) Definitions.

(1) Opioid antagonist--Any drug that binds to opioid receptors and blocks or otherwise inhibits the effects of opioids acting on those receptors.

(2) Opioid-related drug overdose--A condition, evidenced by symptoms such as extreme physical illness, decreased level of consciousness, constriction of the pupils, respiratory depression, or coma, that a layperson would reasonably believe to be the result of the consumption or use of an opioid.

(3) Prescriber--A person authorized by law to prescribe an opioid antagonist.

(c) Dispensing.

(1) A pharmacist may dispense an opioid antagonist under a valid prescription, including a prescription issued by a standing order, to:

(A) a person at risk of experiencing an opioid-related drug overdose; or

(B) a family member, friend, or other person in a position to assist a person described by subparagraph (A) of this paragraph.

(2) A prescription dispensed under this section is considered as dispensed for a legitimate medical purpose in the usual course of professional practice.

(3) A pharmacist who, acting in good faith and with reasonable care, dispenses or does not dispense an opioid antagonist under a valid prescription is not subject to any criminal or civil liability or any professional disciplinary action for:

(A) dispensing or failing to dispense the opioid antagonist; or

(B) if the pharmacist chooses to dispense an opioid antagonist, any outcome resulting from the eventual administration of the opioid antagonist.

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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Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8028

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22 TAC §295.16

The Texas State Board of Pharmacy proposes amendments to §295.16, concerning Administration of Epinephrine by a Pharmacist.

The proposed amendments, if adopted, update the definition of auto-injectors.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure pharmacists are able to appropriately administer epinephrine to consumers in emergency situations.

Written comments on the amendments may be submitted to Allison Vordenbaumen Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-6778. Comments must be received by 5 p.m., October 25, 2016.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§295.16. Administration of Epinephrine by a Pharmacist.

(a) Purpose. The purpose of this section is to allow pharmacists to administer epinephrine through an auto-injector device to a patient in an emergency situation as authorized in Chapter 562 of the Act.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Texas Pharmacy Act, Chapter 551 - 569, Occupations Code, as amended.

(2) Administer--The direct application of a prescription drug to the body of an individual by any means, including injection, by a pharmacist.

(3) Anaphylaxis--A sudden, severe, and potentially life-threatening allergic reaction that occurs when a person is exposed to an allergen. Symptoms may include shortness of breath, wheezing, difficulty breathing, difficulty talking or swallowing, hives, itching, swelling, shock, or asthma. Causes may include, but are not limited to, an insect sting, food allergy, drug reaction, and exercise.

(4) Epinephrine auto-injector--A disposable drug delivery system [~~with a spring-activated needle~~] that contains a premeasured single dose of epinephrine that is used to treat anaphylaxis in an emergency situation [~~is designed for emergency administration of epinephrine to provide rapid, convenient first aid for persons suffering a potentially fatal anaphylactic reaction~~].

(c) Administration requirements.

(1) Pharmacists may administer epinephrine through an auto-injector to a patient in an emergency situation.

(2) The authority of a pharmacist to administer epinephrine through an auto-injector may not be delegated.

(3) Epinephrine administered by a pharmacist under the provisions of this section shall be in the legal possession of a pharmacist or the legal possession of a pharmacy which shall be the pharmacy responsible for drug accountability, including the maintenance of records of administration of the epinephrine.

(d) Limitation on liability.

(1) A pharmacist who in good faith administers epinephrine through an auto-injector in accordance with this section and Chapter 562 of the Act is not liable for civil damages for an act performed in the administration unless the act is willfully or wantonly negligent.

(2) A pharmacist may not receive remuneration for the administration of epinephrine through an auto-injector but may seek reimbursement for the cost of the epinephrine auto-injector.

(3) The administration of epinephrine through an auto-injector to a patient in accordance with the requirements of this section and Chapter 562 of the Act does not constitute the unlawful practice of any health care profession.

(e) Notifications.

(1) A pharmacist who administers epinephrine through an auto-injector to a patient shall report the use to the patient's primary care physician, as identified by the patient, as soon as practical, but in no event more than 72 hours from the time of administering the epinephrine.

(2) Immediately, after administering the epinephrine auto-injector, the pharmacist shall ensure that 911 is called and the patient is evaluated by emergency personnel for possible transfer to the nearest emergency department for additional evaluation, monitoring, and treatment.

(3) The notifications required in paragraph (1) of this subsection shall include the:

(A) name of the patient;

(B) age of the patient if under 8 years of age;

(C) name and manufacturer of the epinephrine auto-injector;

(D) date the epinephrine was administered;

(E) name and title of the person administering the epinephrine; and

(F) name, address, and telephone number of the pharmacy.

(f) Records.

(1) The notification required to be made under this section shall be kept by the pharmacy and such records shall be available for at least two years from the date of such record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement or regulatory agencies.

(2) The notification may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

(A) the records maintained in the alternative system contain all of the information required on the manual record; and

(B) the data processing system is capable of producing a hard copy of the record upon request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

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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Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.11

The Texas State Board of Examiners of Psychologists proposes an amendment to §461.11, Professional Development. The proposed amendment will align the criteria for demonstrating proof of professional development credit from a formal professional development program with the standard practices of professional development providers. The practice of including a signature from the sponsoring organization on documentation of attendance or participation in a formal professional development program is no longer standard practice within the industry. As a result, the Board believes an amendment to the rule is necessary to reflect this change in practice. Without such an amendment, licensees will be unable to claim credit for professional development received from a provider who does not include a signature on its certificates.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701, or via email to brenda@tsbep.texas.gov.

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§461.11. Professional Development.

(a) Requirements. All licensees of the Board are obligated to continue their professional education by completing a minimum of 20 hours of professional development during each year that they hold a license from the Board regardless of the number of separate licenses held by the licensee. Of these 20 hours, all licensees must complete a minimum of three hours of professional development per year in the areas of ethics, the Board's Rules of Conduct, or professional responsibility, and a minimum of three hours in the area of cultural diversity (these include, but are not limited to age, disability, ethnicity, gender, gender identity, language, national origin, race, religion, culture, sexual orientation, and social economic status).

(b) Relevancy. All professional development hours must be directly related to the practice of psychology. The Board shall make the determination as to whether the activity or publication claimed by the licensee is directly related to the practice of psychology. In order to establish relevancy to the practice of psychology, the Board may require a licensee to produce, in addition to the documentation required by subsection (d) of this section, course descriptions, conference catalogs and syllabi, or other material as warranted by the circumstances. The Board does not pre-approve professional development credit. The Board shall not allow professional development credit for personal psychotherapy, workshops for personal growth, the provision of services to professional associations by a licensee, foreign language courses, or computer training classes.

(c) Professional development.

(1) Required hours may be obtained by participating in one or more of the following activities, provided that the specific activity may not be used for credit more than once:

(A) attendance or participation in a formal professional development activity for which professional development hours have been pre-assigned by a provider;

(B) teaching or attendance as an officially enrolled student in a graduate level course in psychology at a regionally accredited institution of higher education;

(C) presentation of a program or workshop; and

(D) authoring or editing publications.

(2) Providers include:

(A) national, regional, state, or local psychological associations; public school districts; regional service centers for public school districts; state or federal agencies; or psychology programs, or counseling centers which host accredited psychology training programs, at regionally accredited institutions of higher education; or

(B) other formally organized groups providing professional development that is directly related to the practice of psychology. Examples of such providers include: public or private institutions, professional associations, and training institutes devoted to the study or practice of particular areas or fields of psychology; and professional associations relating to other mental health professions such as psychiatry, counseling, or social work.

(3) At least half (10) of the required 20 hours of professional development must be obtained from or endorsed by a provider listed in subsection (c)(2)(A) of this section.

(4) Credits will be provided as follows:

(A) For attendance at formal professional development activities, the number of hours pre-assigned by the provider.

(B) For teaching or attendance of a graduate level psychology course, four hours per credit hour. A particular course may not be taught or attended by a licensee for professional development credit more than once.

(C) For presentations of workshops or programs, three hours for each hour actually presented, for a maximum of six hours per year. A particular workshop or presentation topic may not be utilized for professional development credit more than once.

(D) For publications, eight hours for authoring or co-authoring a book; six hours for editing a book; four hours for authoring a published article or book chapter. A maximum credit of eight hours for publication is permitted for any one year.

(5) Professional development hours must have been obtained during the 12 months prior to the renewal period for which they are submitted. If the hours were obtained during the license renewal month and are not needed for compliance for that year, they may be submitted the following year to meet that year's professional development requirements. A professional development certificate may not be considered towards fulfilling the requirements for more than one renewal year.

(d) Documentation. It is the responsibility of each licensee to maintain documentation of all professional development hours claimed under this rule and to provide this documentation upon request by the Board. Licensees shall maintain documentation of all professional development hours claimed for at least five years. The Board will accept as documentation of professional development:

(1) for hours received from attendance or participation in formal professional development activities, a certificate or other document containing the name of the sponsoring organization, the title of the activity, the number of pre-assigned professional development hours for the activity, [~~the signature of an official representative of the sponsoring organization,~~] and the name of the licensee claiming the hours;

(2) for hours received from attending college or university courses, official grade slips or transcripts issued by the institution of higher education must be submitted;

(3) for hours received for teaching college or university courses, documentation demonstrating that the licensee taught the course must be submitted;

(4) for presenters of professional development workshops or programs, copies of the official program announcement naming the licensee as a presenter and an outline or syllabus of the contents of the program or workshop;

(5) for authors or editors of publications, a copy of the article or table of contents or title page bearing the name of licensee as the author or editor;

(6) for online or self-study courses, a copy of the certificate of completion containing the name of the sponsoring organization, the title of the course, the number of pre-assigned professional development hours for the activity, and stating the licensee passed the examination given with the course.

(e) Declaration Form. All licensees must sign and submit a completed Professional Development Declaration Form for each year in which they are licensed by the Board specifying the professional development received for the preceding renewal period. Licensees wishing to renew their license must submit the declaration form with the annual renewal form and fee no later than the renewal date. Licensees who do not wish to renew their license must submit the declaration form along with a written request to retire the license on or before the renewal date. Licensees shall not submit documentation of professional development credits obtained unless requested to do so by the Board. Licensees who are not audited pursuant to subsection (f) of this section and who are otherwise eligible may declare their professional development on the online license renewal form.

(f) Audit. The Board conducts two types of audits. Licensees shall comply with all Board requests for documentation and information concerning compliance with professional development and/or Board audits.

(1) Random audits. Each month, 10% of the licensees will be selected by an automated process for an audit of the licensee's compliance with the Board's professional development requirements. The Board will notify a licensee by mail of the audit. Upon receipt of an audit notification, licensees planning to renew their licenses must submit requested documentation of compliance to the Board with their annual renewal form no later than the renewal date of the license. A licensee who is audited may renew their license online provided that they submit the professional development documentation to the Board at least two weeks in advance of their online renewal so that it can be pre-approved. Licensees wishing to retire their licenses should submit the requested documentation no later than the renewal date of the license.

(2) Individualized audits. The Board will also conduct audits of a specific licensee's compliance with its professional development requirements at any time that the Board determines that there are grounds to believe that a licensee has not complied with the requirements of this rule. Upon receipt of notification of an individualized audit, the licensee must submit all requested documentation within the time period specified in the notification.

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 6, 2016.

TRD-201604632
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 305-7700

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CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.11

The Texas State Board of Examiners of Psychologists proposes amendments to §463.11, Licensed Psychologist. The proposed amendment is necessary to allow those applicants who complete their post-doctoral year of supervised experience prior to September 1, 2016, to utilize that experience for licensure purposes. Absent this amendment, an applicant who completed his or her post-doctoral year of supervised experience prior to September 1, 2016, would be unable to count that experience toward the post-doctoral experience required under subsection (d) of this rule, because the applicant may not have been provisionally licensed when he or she acquired the experience and could not have obtained provisional trainee status at that time. This amendment will not operate to exempt an applicant from the applicability of the gap rules set forth in subsection (d)(1)(B) of this rule.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701, or via email to brenda@tsbep.texas.gov.

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.11. Licensed Psychologist.

(a) Application Requirements. Application for licensure as a psychologist may be made upon passage of, or exemption from the Oral Examination. An application for licensure as a psychologist includes, in addition to the requirements set forth in Board rule §463.5(1) of this title (relating to Application File Requirements):

(1) Documentation of current licensure as a provisionally licensed psychologist in good standing.

(2) Documentation indicating passage of or exemption from the Board's Oral Examination.

(3) Documentation of supervised experience from a licensed psychologist which satisfies the requirements of the Board. The formal internship must be documented by the Director of Internship Training.

(4) Documentation of licensure in other jurisdictions, including information on disciplinary action and pending complaints, sent directly to the Board.

(b) Degree Requirements. The degree requirements for licensure as a psychologist are the same as for provisional licensure as stated in Board rule §463.10 of this title (relating to Provisionally Licensed Psychologist).

(c) Supervised Experience. In order to qualify for licensure, a psychologist must submit proof of two years of supervised experience, at least one year of which must have been received after the doctoral degree was officially conferred or completed, whichever is earliest, as shown on the official transcript, and at least one year of which must have been a formal internship. The formal internship year may be met either before or after the doctoral degree is conferred or completed. Supervised experience must be obtained in a minimum of two, and no more than three, calendar years.

(1) General. All supervised experience for licensure as a psychologist, including the formal internship, must meet the following requirements:

(A) Experience may be obtained only in either a full-time or half-time setting.

(B) A year of full-time supervised experience is defined as a minimum of 35 hours per week employment/experience in not less than 12 consecutive calendar months in not more than two placements.

(C) A year of half-time supervised experience is defined as a minimum of 20 hours per week employment/experience in not less than 24 consecutive calendar months in not more than two placements.

(D) A year of full-time experience may be acquired through a combination of half-time and full-time employment/experience provided that the equivalent of a full-time year of supervision experience is satisfied.

(E) One calendar year from the beginning of ten consecutive months of employment/experience in an academic setting constitutes one year of experience.

(F) When supervised experience is interrupted, the Board may waive upon a showing of good cause by the supervisee, the requirement that the supervised experience be completed in consecutive months. Any consecutive experience obtained before or after the gap must be at least six months unless the supervisor remains the same. Waivers for such gaps are rarely approved and must be requested in writing and include sufficient documentation to permit verification of the circumstances supporting the request. No waiver will be granted unless the Board finds that the supervised experience for which the waiver is sought was adequate and appropriate. Good cause is defined as:

(i) unanticipated discontinuance of the supervision setting,

(ii) maternity or paternity leave of supervisee,

(iii) relocation of spouse or spousal equivalent,

(iv) serious illness of the supervisee, or serious illness in supervisee's immediate family.

(G) A rotating internship organized within a doctoral program is considered to be one placement.

(H) The experience requirement must be obtained after official enrollment in a doctoral program.

(I) All supervised experience must be received from a psychologist licensed at the time supervision is received.

(J) The supervising psychologist must be trained in the area of supervision provided to the supervisee.

(K) No experience which is obtained from a psychologist who is related within the second degree of affinity or within the second degree by consanguinity to the person may be considered.

(L) All supervised experience obtained for the purpose of licensure must be conducted in accordance with all applicable Board rules.

(M) Experience received from a psychologist while the psychologist is practicing subject to an Agreed Board Order or Board Order shall not, under any circumstances, qualify as supervised experience for licensure purposes regardless of the setting in which it was received. Psychologists who become subject to an Agreed Board Order or Board Order shall inform all supervisees of the Agreed Board Order or Board Order and assist all supervisees in finding appropriate alternate supervision.

(N) The supervisee shall be designated by a title that clearly indicates a supervisory licensing status such as "intern," "resident," "trainee," or "fellow." An individual who is a provisionally licensed psychologist or a licensed psychological associate may use his or her title so long as those receiving psychological services are clearly informed that the individual is under the supervision of a licensed psychologist. An individual who is a licensed specialist in school psychology may use his or her title so long as the supervised experience takes place within the public schools, and those receiving psychological services are clearly informed that the individual is under the supervision of an individual who is licensed as a psychologists and specialist in school psychology. Use of a different job title is permitted only if the supervisee is providing services for a government facility or other facility exempted under §501.004 of the Act (Applicability) and the supervisee is using a title assigned by that facility.

(O) The supervisee and supervisor must inform those receiving psychological services as to the supervisory status of the individual and how the patient or client may contact the supervising licensed psychologist directly.

(2) Formal Internship. At least one year of experience must be satisfied by one of the following types of formal internship:

(A) The successful completion of an internship program accredited by the American Psychological Association (APA); or

(B) The successful completion of an organized internship meeting all of the following criteria:

(i) It must constitute an organized training program which is designed to provide the intern with a planned, programmed sequence of training experiences. The primary focus and purpose of the program must be to assure breadth and quality of training.

(ii) The internship agency must have a clearly designated staff psychologist who is responsible for the integrity and quality of the training program and who is actively licensed/certified by the licensing board of the jurisdiction in which the internship takes place and who is present at the training facility for a minimum of 20 hours a week.

(iii) The internship agency must have two or more full-time licensed psychologists on the staff as primary supervisors.

(iv) Internship supervision must be provided by a staff member of the internship agency or by an affiliate of that agency who carries clinical responsibility for the cases being supervised.

(v) The internship must provide training in a range of assessment and intervention activities conducted directly with patients/clients.

(vi) At least 25% of trainee's time must be in direct patient/client contact (minimum 375 hours).

(vii) The internship must include a minimum of two hours per week (regardless of whether the internship was completed in one year or two) of regularly scheduled formal, face-to-face individual supervision. There must also be at least two additional hours per week in learning activities such as: case conferences involving a case in which the intern was actively involved; seminars dealing with psychology issues; co-therapy with a staff person including discussion; group supervision; additional individual supervision.

(viii) Training must be post-clerkship, post-practicum and post-externship level.

(ix) The internship agency must have a minimum of two full-time equivalent interns at the internship level of training during applicant's training period.

(x) The internship agency must inform prospective interns about the goals and content of the internship, as well as the expectations for quantity and quality of trainee's work; or

(C) The successful completion of an organized internship program in a school district meeting the following criteria:

(i) The internship experience must be provided at or near the end of the formal training period.

(ii) The internship experience must occur on a full-time basis over a period of one academic year, or on a half-time basis over a period of two consecutive academic years.

(iii) The internship experience must be consistent with a written plan and must meet the specific training objectives of the program.

(iv) The internship experience must occur in a setting appropriate to the specific training objectives of the program.

(v) At least 600 clock hours of the internship experience must occur in a school setting and must provide a balanced exposure to regular and special educational programs.

(vi) The internship experience must occur under conditions of appropriate supervision. Field-based internship supervisors, for the purpose of the internship that takes place in a school setting, must be licensed as a psychologist and, if a separate credential is required to practice school psychology, must have a valid credential to provide psychology in the public schools. The portion of the internship which appropriately may take place in a non-school setting must be supervised by a psychologist.

(vii) Field-based internship supervisors must be responsible for no more than two interns at any given time. University internship supervisors shall be responsible for no more than twelve interns at any given time.

(viii) Field-based internship supervisors must provide at least two hours per week of direct supervision for each intern. University internship supervisors must maintain an ongoing relationship with field-based internship supervisors and shall provide at least one field-based contact per semester with each intern.

(ix) The internship site shall inform interns concerning the period of the internship and the training objectives of the program.

(x) The internship experience must be systematically evaluated in a manner consistent with the specific training objectives of the program.

(xi) The internship experience must be conducted in a manner consistent with the current legal-ethical standards of the profession.

(xii) The internship agency must have a minimum of two full-time equivalent interns at the internship level during the applicant's training period.

(xiii) The internship agency must have the availability of at least two full-time equivalent psychologists as primary supervisors, at least one of whom is employed full time at the agency and is a school psychologist.

(3) Industrial/Organizational Requirements. Individuals enrolled in an Industrial/Organizational doctoral degree program are exempt from the formal internship requirement and must complete two full years of supervised experience, at least one of which must be received after the doctoral degree is conferred and both of which must meet the requirements of paragraph (1) of this subsection. Individuals who do not undergo a formal internship pursuant to this paragraph should note that Board rules prohibit a psychologist from practicing in an area in which he or she does not have sufficient training and experience, of which a formal internship year is considered to be an integral requirement.

(d) Supervised Experience. In order to qualify for licensure, an applicant must submit proof of a minimum of 3,500 hours of supervised experience, at least 1,750 of which must have been received after obtaining either provisional trainee status or provisional licensure, and at least 1,750 of which must have been obtained through a formal internship that occurred prior to conferral of the doctoral degree. Following the conferral of a doctoral degree, 1,750 hours obtained while employed in the delivery of psychological services in an exempt setting [~~facility~~] or in another jurisdiction, or 1,750 hours completed prior to September 1, 2016, under the supervision of a licensed psychologist, may be substituted for the minimum of 1,750 hours of supervised experience required as a provisional trainee or provisionally licensed psychologist.

(1) General. All supervised experience for licensure as a psychologist, including the formal internship, must meet the following requirements:

(A) Each period of supervised experience must be obtained in not more than two placements, and in not more than 24 consecutive months.

(B) Gaps Related to Supervised Experience.

(i) Unless a waiver is granted by the Board, an application for a psychologist's license will be denied if a gap of more than 2 years exists between:

(I) the date an applicant's doctoral degree was officially conferred and the date the applicant began obtaining their hours of supervised experience under provisional trainee status or provisional licensure; or

(II) the completion date of an applicant's hours of supervised experience acquired as a provisional trainee or provisionally licensed psychologist, and the date of application.

(ii) The Board shall grant a waiver upon a showing of good cause by the applicant. Good cause shall include, but is not limited to:

(I) proof of continued employment in the delivery of psychological services in an exempt setting as described in §501.004 of the Act, during any gap period;

(II) proof of annual professional development, which at a minimum meets the Board's professional development requirements, during any gap period;

(III) proof of enrollment in a course of study in a regionally accredited institution or training facility designed to prepare the individual for the profession of psychology during any gap period; or

(IV) proof of licensure as a psychologist and continued employment in the delivery of psychological services in another jurisdiction.

(C) A formal internship with rotations, or one that is part of a consortium within a doctoral program, is considered to be one placement. A consortium is composed of multiple placements that have entered into a written agreement setting forth the responsibilities and financial commitments of each participating member, for the purpose of offering a well-rounded, unified psychology training program whereby trainees work at multiple sites, but obtain training from one primary site with some experience at or exposure to aspects of the other sites that the primary site does not offer.

(D) The supervised experience required by this rule must be obtained after official enrollment in a doctoral program.

(E) All supervised experience must be received from a psychologist licensed at the time supervision is received.

(F) The supervising psychologist must be trained in the area of supervision provided to the supervisee.

(G) Experience obtained from a psychologist who is related within the second degree of affinity or consanguinity to the supervisee may not be utilized to satisfy the requirements of this rule.

(H) All supervised experience obtained for the purpose of licensure must be conducted in accordance with all applicable Board rules.

(I) Unless authorized by the Board, supervised experience received from a psychologist practicing with a restricted license may not be utilized to satisfy the requirements of this rule.

(J) The supervisee shall be designated by a title that clearly indicates a supervisory licensing status such as "intern," "resident," "trainee," or "fellow." An individual who is a Provisionally Licensed Psychologist or a Licensed Psychological Associate may use his or her title so long as those receiving psychological services are clearly informed that the individual is under the supervision of a licensed psychologist. An individual who is a Licensed Specialist in School Psychology may use his or her title so long as the supervised experience takes place within the public schools, and those receiving psychological services are clearly informed that the individual is under the supervision of an individual who is licensed as a psychologist and specialist in school psychology. Use of a different job title is permitted only if authorized under §501.004 of the Psychologists' Licensing Act, or another Board rule.

(2) Formal Internship. The formal internship hours must be satisfied by one of the following types of formal internships:

(A) The successful completion of an internship program accredited by the American Psychological Association (APA) or Canadian Psychological Association (CPA), or which is a member of the Association of Psychology Postdoctoral and Internship Centers (APPIC); or

(B) The successful completion of an organized internship meeting all of the following criteria:

(i) It must constitute an organized training program which is designed to provide the intern with a planned, programmed sequence of training experiences. The primary focus and purpose of the program must be to assure breadth and quality of training.

(ii) The internship agency must have a clearly designated staff psychologist who is responsible for the integrity and quality of the training program and who is actively licensed/certified by the licensing board of the jurisdiction in which the internship takes place and who is present at the training facility for a minimum of 20 hours a week.

(iii) The internship agency must have two or more full-time licensed psychologists on the staff as primary supervisors.

(iv) Internship supervision must be provided by a staff member of the internship agency or by an affiliate of that agency who carries clinical responsibility for the cases being supervised.

(v) The internship must provide training in a range of assessment and intervention activities conducted directly with patients/clients.

(vi) At least 25% of trainee's time must be in direct patient/client contact.

(vii) The internship must include a minimum of two hours per week of regularly scheduled formal, face-to-face individual supervision. There must also be at least four additional hours per week in learning activities such as: case conferences involving a case in which the intern was actively involved; seminars dealing with psychology issues; co-therapy with a staff person including discussion; group supervision; additional individual supervision.

(viii) Training must be post-clerkship, post-practicum and post-externship level.

(ix) The internship agency must have a minimum of two full-time equivalent interns at the internship level of training during applicant's training period.

(x) The internship agency must inform prospective interns about the goals and content of the internship, as well as the expectations for quantity and quality of trainee's work, including expected competencies; or

(C) The successful completion of an organized internship program in a school district meeting the following criteria:

(i) The internship experience must be provided at or near the end of the formal training period.

(ii) The internship experience must require a minimum of 35 hours per week over a period of one academic year, or a minimum of 20 hours per week over a period of two consecutive academic years.

(iii) The internship experience must be consistent with a written plan and must meet the specific training objectives of the program.

(iv) The internship experience must occur in a setting appropriate to the specific training objectives of the program.

(v) At least 600 clock hours of the internship experience must occur in a school setting and must provide a balanced exposure to regular and special educational programs.

(vi) The internship experience must occur under conditions of appropriate supervision. Field-based internship supervisors, for the purpose of the internship that takes place in a school setting, must be licensed as a psychologist and, if a separate credential is required to practice school psychology, must have a valid credential to provide psychology in the public schools. The portion of the internship which appropriately may take place in a non-school setting must be supervised by a psychologist.

(vii) Field-based internship supervisors must be responsible for no more than two interns at any given time. University internship supervisors shall be responsible for no more than twelve interns at any given time.

(viii) Field-based internship supervisors must provide at least two hours per week of direct supervision for each intern. University internship supervisors must maintain an ongoing relationship with field-based internship supervisors and shall provide at least one field-based contact per semester with each intern.

(ix) The internship site shall inform interns concerning the period of the internship and the training objectives of the program.

(x) The internship experience must be systematically evaluated in a manner consistent with the specific training objectives of the program.

(xi) The internship experience must be conducted in a manner consistent with the current legal-ethical standards of the profession.

(xii) The internship agency must have a minimum of two full-time equivalent interns at the internship level during the applicant's training period.

(xiii) The internship agency must have the availability of at least two full-time equivalent psychologists as primary supervisors, at least one of whom is employed full time at the agency and is a school psychologist.

(3) Industrial/Organizational Requirements. Individuals enrolled in an Industrial/Organizational doctoral degree program are exempt from the formal internship requirement but must complete 3,500 hours of supervised experience meeting the requirements of paragraph (1) of this subsection, at least 1,750 of which must have been received as a provisional trainee or provisionally licensed psychologist. Individuals who do not undergo a formal internship pursuant to this paragraph should note that Board rules prohibit a psychologist from practicing in an area in which they do not have sufficient training and experience, of which a formal internship is considered to be an integral requirement.

(4) Licensure Following Retraining.

(A) In order to qualify for licensure after undergoing retraining, an applicant must demonstrate the following:

(i) conferral of a doctoral degree in psychology from a regionally accredited institution of higher education prior to undergoing retraining;

(ii) completion of a formal, accredited post-doctoral retraining program in psychology which included at least 1,750 hours in a formal internship;

(iii) retraining within the two year period preceding the date of application for licensure under this rule, or continuous employment in the delivery of psychological services in an exempt setting as described in §501.004 of the Psychologists' Licensing Act since receiving their doctoral degree; and

(iv) upon completion of the retraining program, at least 1,750 hours of supervised experience after obtaining either provisional trainee status or provisional licensure.

(B) An applicant meeting the requirements of this subsection is considered to have met the requirements for supervised experience under this rule.

(e) Effective Date of Change Regarding Supervised Experience. Subsection (d), along with all of its subparts, shall take effect, supersede, and take the place of subsection (c) on September 1, 2017.

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 6, 2016.

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 305-7700

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CHAPTER 465. RULES OF PRACTICE

22 TAC §465.38

The Texas State Board of Examiners of Psychologists proposes amendments to §465.38, Psychological Services for Public Schools. The proposed amendments are necessary to correct typographical errors in the statutory citation.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701, or via email to *brenda@tsbep.texas.gov.*

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§465.38. Psychological Services for Public Schools.

(a) This rule acknowledges the unique difference in the delivery of school psychological services in the public schools from psychological services in the private sector. The Board recognizes the purview of the State Board of Education and the Texas Education Agency in safeguarding the rights of public school children in Texas. The mandated multidisciplinary team decision making, hierarchy of supervision, regulatory provisions, and past traditions of school psychological service delivery both nationally and in Texas, among other factors, allow for rules of practice in the public schools which reflect these occupational distinctions from the private practice of psychology.

(b) Scope of Practice.

(1) A Licensed Specialist in School Psychology (LSSP) means a person who is trained to address psychological and behavioral problems manifested in and associated with educational systems by utilizing psychological concepts and methods in programs or actions which attempt to improve the learning, adjustment and behavior of students. Such activities include, but are not limited to, addressing special education eligibility, conducting manifestation determinations, and assisting with the development and implementation of individual educational programs, conducting behavioral assessments, and designing and implementing behavioral interventions and supports.

(2) The assessment of emotional or behavioral disturbance, for educational purposes, using psychological techniques and procedures is considered the practice of psychology.

(c) The specialist in school psychology license permits the licensee to provide school psychological services only in Texas public schools, including charter schools. A person utilizing this license may not provide psychological services in any context or capacity outside of their employment or contract with public schools.

(d) The correct title for an individual holding a specialist in school psychology license is Licensed Specialist in School Psychology or LSSP. Only individuals who meet the requirements of Board rule §465.6 of this title (relating to Listings, Public Statements and Advertisements, Solicitations, and Specialty Titles) may refer to themselves as School Psychologists. No individual may use the title Licensed School Psychologist. An LSSP who has achieved certification as a Nationally Certified School Psychologist (NCSP) may use this credential along with the license title of LSSP.

(e) Providers of Psychological Services Within the Public Schools.

(1) School psychological services may be provided in Texas public schools only by individuals authorized by this Board to provide such services. Individuals who may provide such school psychological services include:

(A) LSSPs;

(B) Those individuals listed in Board rule §463.9(g) of this title (relating to Licensed Specialist in School Psychologists); and

(C) Individuals seeking to fulfill the licensing requirements of Board rule §463.8 of this title (relating to Licensed Psychological Associate), Board rule §463.10 of this title (relating to Provisionally Licensed Psychologists), or Board rule §463.11 of this title (relating to Licensed Psychologist).

(2) Licensees who do not hold the specialist in school psychology license may contract for specific types of psychological services, such as clinical psychology, counseling psychology, neuropsychology, and family therapy. Such contracting must be on a short term or part-time basis, and shall not involve the broad range of school psychological services listed in subsection (b)(1) of this rule.

(3) An LSSP who contracts with a school district to provide school psychological services may not subcontract services which they have been contracted to provide.

(f) Compliance with Applicable Education Laws. LSSPs shall comply with all applicable state and federal laws affecting the practice of school psychology, including, but not limited to:

(1) Texas Education Code;

(2) Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g; [§1232g;]

(3) Individuals with Disabilities Education Improvement Act (IDEIA), 20 U.S.C. §1400 et seq.;

(4) Texas Public Information Act ("Open Records Act"), Texas Government Code, Chapter 552;

(5) Section 504 of the Rehabilitation Act of 1973; and.

(6) Americans with Disabilities Act (ADA) 42 U.S.C. §12101.

(g) Informed Consent. Informed consent for a Licensed Specialist in School Psychology must be obtained in accordance with the Individuals with Disabilities Education Improvement Act (IDEIA) and the U.S. Department of Education's rules governing parental consent when delivering school psychological services in the public schools, and is considered to meet the requirements for informed consent under Board rules. No additional informed consent, specific to any Board rules, is necessary. Licensees providing psychological services under subsection (e)(2) however, must obtain informed consent as otherwise required by the Board 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.

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Darrel D. Spinks
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Texas State Board of Examiners of Psychologists
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CHAPTER 471. RENEWALS

22 TAC §471.5

The Texas State Board of Examiners of Psychologists proposes an amendment to §471.5, Updated Information Requirements. The proposed amendment is necessary to ensure that the reporting requirements for license renewal match those same reporting requirements set out in Board rule §469.11.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701, or via email to brenda@tsbep.texas.gov.

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§471.5. Updated Information Requirements.

Each licensee shall provide the following information when renewing his/her license each year:

(1) Any of those matters which the licensee is required to report under Board rule §469.11 of this title (relating to Legal Actions Reported and Reciprocal Discipline. [If the licensee has ever been arrested, charged, sentenced, or placed on community supervision or pretrial diversion for any crime which the licensee has not previously reported to the Board;]

[(2) If the licensee has been a party (plaintiff or defendant) to any civil lawsuit pertaining to the practice of psychology or involving any patient or former patient not previously reported to the Board;]

(2) [(3)] The names of all jurisdictions where the licensee currently holds a license to practice psychology;

[(4) If there is a pending action or final action against a mental health professional license held by the licensee in any jurisdiction that the licensee has not previously reported to the Board;]

(3) [(5)] If the licensee has complied with the annual requirements for professional development;

(4) [(6)] If the licensee has a guaranteed student loan in default; and

(5) [(7)] If the licensee is currently in default of any court-ordered child support.

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 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §114.7 and §114.64.

Background and Summary of the Factual Basis for the Proposed Rules

The Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) was established to enhance the objectives of the Vehicle Inspection and Maintenance Program (I/M). The 77th Texas Legislature, 2001, enacted House Bill (HB) 2134 to create the LIRAP to assist low income individuals with repairs, retrofits, or retirement of vehicles that fail emissions inspections. The 80th Texas Legislature, 2007, enacted HB 12 to make LIRAP assistance available for retirement of vehicles that are 10 years old or older. Beginning in March 2002, the TCEQ adopted rules in Chapter 114 as necessary to implement the LIRAP as codified under Texas Health and Safety Code (THSC), §§382.209 - 382.216, 382.218, and 382.219.

The LIRAP requirements specified in §114.64 and in THSC, §382.210 currently require replacement vehicles to be certified to meet federal Tier 2, Bin 5 or a cleaner Bin certification under Title 40 Code of Federal Regulations (CFR) §86.1811-04 in order to qualify for vehicle replacement assistance through the LIRAP. This tiered system refers to federal vehicle emission standards established by the United States Environmental Protection Agency (EPA). The EPA promulgated new rules to establish the Tier 3 Motor Vehicle Emission and Fuel Standards on April 28, 2014, under 40 CFR §86.1811-17. The Tier 3 emission standards are equivalent to or cleaner than the current Tier 2, Bin 5 emission standards. However, the Tier 3 rules are found in a different section in the CFR than the Tier 2 rules. Therefore, the TCEQ rules need to be updated to reflect the most current federal Motor Vehicle Emission and Fuel Standards.

The Tier 3 emission standards will be phased in and replace the existing Tier 2 emission standards beginning with Model Year 2017 vehicles. This phase-in schedule requires 60% compliance of all covered vehicle classes by Model Year 2019, 80% compliance by Model Year 2021, and complete transition to the Tier 3 emission standards by Model Year 2022. Some automobile manufacturers have already certified certain Model Year 2016 vehicles to the new Tier 3 emissions standards earlier than required, which has proven problematic for the LIRAP. Because current rule language exclusively refers to Tier 2 emission standards, any vehicles certified to the Tier 3 emission standards are not eligible for purchase with LIRAP replacement assistance even though the engines are certified equivalent to or cleaner than the Tier 2, Bin 5 emission standards. This proposed rulemaking would amend the LIRAP rules in §114.7 and §114.64 to incorporate the Tier 3 emission standards into the program requirements as allowed under THSC, §382.210(c). If the Tier 3 emission standards are not incorporated into the LIRAP rule, then the number of vehicles eligible for purchase with LIRAP replacement assistance will be largely reduced beginning with Model Year 2017 and nearly depleted when the Tier 3 emission standards are fully implemented by Model Year 2022.

This proposed rulemaking would also amend the LIRAP rules in §114.64 to limit applicants to receive no more than $600 in assistance annually per vehicle to make emissions-related repairs needed to pass the required annual emissions inspection. The required annual emissions inspection is the emissions inspection test that must be performed and passed within 90 days of the vehicle's registration expiration date as a prerequisite for vehicle registration renewal. Repair assistance is intended to bring failing vehicles into compliance with emissions requirements.

Current rule language in §114.64(e) requires a repaired vehicle to pass a safety and emissions inspection retest before the recognized emissions repair facility is reimbursed by the local program administrator. This language also limits local program administrator discretion for payment to cases where the recognized emissions repair facility made repairs and the vehicle still did not pass a subsequent emissions inspection retest. However, local program administrators interpreted this discretion as allowing multiple repair assistance vouchers of up to $600 per voucher for the same vehicle within one year as long as the applicant presented a failing inspection. The TCEQ issued guidance to the program administrators on August 3, 2015 stating that no more than $600 in LIRAP funds may be used for emissions-related repairs per vehicle per year. Under this guidance, the local program administrators may only decide whether to reimburse the cost of the diagnosed emissions-related repairs up to $600, not whether to issue an additional $600 repair voucher to the applicant for subsequent repairs. This guidance was then issued to the participating recognized emissions repair facilities by the program administrators. The proposed amendment to §114.64 would reflect this guidance and clarify the annual limit on repair assistance.

Another clarifying change that is being proposed relates to the definition of "Engine." The LIRAP rules allow participating dismantlers to salvage some parts for resale from the retired vehicles they receive through the LIRAP, but dismantlers are explicitly prohibited from selling the emissions control equipment and engines from retired vehicles. While the rule specifically defines the components of emissions control equipment, the definition of "Engine" does not have the same amount of detail. This proposed rulemaking would amend the LIRAP rules in §114.7 to revise the definition of "Engine" as needed to clarify which components of a vehicle retired through the LIRAP may not be sold by a dismantler after the vehicle's retirement.

Section by Section Discussion

Subchapter A: Definitions

§114.7, Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions

The commission proposes to amend §114.7 to revise definitions as needed for clarity and for consistency with the proposed revisions to Subchapter C. Specifically, the proposed amendment to §114.7(9) would more clearly define the term "Engine" to clarify the components that comprise the engine. The structure of the proposed definition would be consistent with the definition of "Emissions control equipment" specified in paragraph (8), which lists the components that must be destroyed through the LIRAP.

In addition, the commission proposes to amend §114.7(25) to revise the definition of "Replacement vehicle" to identify the Tier 3 emission standards, as codified in 40 CFR §86.1811-17, as an eligible engine certification for replacement vehicles purchased through the LIRAP. The proposed revision would also remove the reference to the publication date of the Tier 2 emission standards in the *Federal Register* to allow the LIRAP rule to automatically incorporate future changes made to these emission standards by the EPA. The proposed revision does not include a reference to the *Federal Register* publication date of the Tier 3 emission standards for the same reason. The EPA has published changes to the Tier 3 rules in the *Federal Register* as recently as April 22, 2016, and may need to make additional technical revisions to

the Tier 3 emission standards in the future to address issues occurring during the phase in period, i.e. Model Year 2017 through Model Year 2022. Allowing the LIRAP rules to incorporate future revisions to these federal rules ensures that the LIRAP requirements remain current with the federal certification standards they rely upon.

The commission also proposes to amend §114.7 to make nonsubstantive clarifying changes as needed for accuracy and consistency with the proposed changes to this subchapter.

Subchapter C: Vehicle Inspection and Maintenance; Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program; and Early Action Compact Counties

Division 2: Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program

§114.64, LIRAP Requirements

The commission proposes to amend §114.64 to incorporate the Tier 3 emission standards established under 40 CFR §86.1811-17 as an eligibility component for replacement vehicles. The Tier 3 emission standards are set to replace the current Tier 2 emission standards beginning in Model Year 2017. Therefore, integrating the new federal Tier 3 emission standards into the LIRAP rule is necessary to maintain the overall functionality of the program. The tiered certification also serves as a determinant for the vehicle replacement compensation amount. Existing rule language allows up to $3,000 in assistance for vehicles certified Tier 2, Bin 5 and Tier 2, Bin 4 and $3,500 in assistance for vehicles certified at Tier 2, Bin 3 and cleaner Bins. The proposed rule language would reference the Tier 3 bin equivalents to determine the compensation amount for Tier 3 replacement vehicles. The proposed amendment to §114.64 would also remove the publication date of the Tier 2 emission standards in the *Federal Register* as needed for consistency with the proposed amendment to §114.7(25).

In addition, the commission proposes to amend §114.64 to specify that no more than $600 in assistance may be granted annually per vehicle per applicant for emissions-related repairs to pass the required annual emissions inspection as needed to clarify the annual limit on repair assistance.

The commission also proposes to amend §114.64 to make nonsubstantive clarifying changes as needed for accuracy and consistency with the proposed changes to this subchapter and to conform to *Texas Register* style and formatting requirements.

Fiscal Note: Costs to State and Local Government

Maribel Montalvo, Analyst in the Chief Financial Officer's Division, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules would clarify existing language and provide details for the LIRAP, authorized in THSC, §382.209. This rulemaking proposes amendments to Chapter 114.

First, the proposed amendments would revise the definition of "Engine" and specifically identify the components of a vehicle that may not be sold by a dismantler after a vehicle's retirement. Currently, participating dismantlers are prohibited from selling the engine and emissions control equipment of retired LIRAP vehicles. However, while the definition of "Emissions control equipment" contains a list of specific parts, the definition of "Engine" does not. The proposed amendment would provide similar necessary detail.

Next, the proposed amendments would add a new federal standard, Tier 3 emission standards, to the definition of a LIRAP "Replacement vehicle." Current LIRAP rules identify Tier 2 emission standards as a determinant for replacement vehicle eligibility. Tier 3 emission standards are equivalent to or cleaner than the Tier 2 emission standards. These new standards will gradually replace the existing Tier 2 emission standards, beginning with Model Year 2017. Federal or state legislative mandates do not require the acceptance of the new Tier 3 emission standards. However, it is necessary to add the new emission standards to the rule in order to ensure the continued viability of the LIRAP. The proposed amendment to §114.64 would incorporate Tier 3 emission standards in the LIRAP requirements in order to maintain the eligible vehicle list as Tier 2 standards are phased out.

Finally, the proposed amendments would provide that an applicant may receive up to $600 in LIRAP assistance toward emissions-related repair per vehicle per year. This proposed change is necessary to validate the maximum dollar amount of assistance available to the participant. The proposed rulemaking would not affect current fees or change any procedures currently in place.

The proposed rule changes do not create any new responsibilities or additional costs for the I/M Program or the program administrators. There are no expected cost savings for the participating counties that would result from the proposed rulemaking. The LIRAP is funded by fees paid by vehicle owners through the I/M Program. The proposed rule changes are administrative in nature and would not affect the fees collected through the I/M Program, or the funds allocated to LIRAP-participating counties.

These proposed amendments do not create any new responsibilities in enforcement or procedure for TCEQ staff. The proposed changes would not require new or additional funding to implement the rules. There is no expected cost saving implications for the commission as a result of the proposed rule amendments. Similarly, there is no expected impact on other state agencies.

Participation in the LIRAP is voluntary. LIRAP assistance is currently available in 16 counties: Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties in the Houston-Galveston-Brazoria area; Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties in the Dallas-Fort Worth area; and Travis and Williamson Counties. The LIRAP is administered in these counties either by a local council of governments or by the county.

Public Benefits and Costs

Ms. Montalvo also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules would be to maintain the objectives of the I/M Program by providing assistance to low income individuals with repairs, retrofits, replacement, or retirement of vehicles that fail emissions inspections. The I/M Program objectives are intended to reduce air pollution from motor vehicles and maintain compliance with the Federal Clean Air Act.

No fiscal implications are anticipated for businesses or individuals due to implementation or administration of the proposed rules. Participation in the LIRAP is voluntary for businesses and individuals.

The inclusion of vehicles certified under the Tier 3 emission standards ensures that recipients of LIRAP vehicle replacement assistance have a wide variety of eligible replacement vehicles available for purchase. When a replacement vehicle is to be purchased, LIRAP voucher recipients can select a vehicle from the current model year or the three previous model years (two previous model years for trucks).

If the Tier 3 emission standards are not incorporated into the LIRAP requirements, the pool of eligible vehicles would quickly decline with 2017 and subsequent model years. There would be a limited number of eligible vehicles available for purchase through the LIRAP within the next five years, with full compliance of the Tier 3 emission standards required by 2022.

The proposed amendments would help maintain the number of eligible vehicles as federal certifications change, thus providing the public the option to replace older vehicles with the newest, cleaner emitting vehicles. The proposed amendment to the emission standards would not create costs for auto dealerships or individual applicants. Incorporating the Tier 3 emission standards would allow the LIRAP to continue to function and allow applicants to receive vehicle replacement assistance. Continuation of the program allows auto dealerships to market the newest models to potential recipients.

The proposed changes to the definition of "Engine" would not impose any new requirements or costs to the dismantlers who receive retired LIRAP vehicles. Similarly, this proposed change does not generate any cost savings for the participating dismantlers and would have no impact on individual applicants.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. Participation in the LIRAP is voluntary for any affected small or micro-businesses.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the adopted rulemaking does not meet the definition of a major environmental rule. Texas Government Code, §2001.0225 states that a major environmental rule is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, while the rulemaking does not constitute a major environmental rule, even if it did, a regulatory impact analysis would not be required because the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule. Texas Government Code, §2001.0225 applies only to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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) adopts a rule solely under the general powers of the agency instead of under a specific state law. Specifically, the proposed rulemaking does not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225 because: 1) the rulemaking is not designed to exceed any relevant standard set by federal law; 2) parts of the rulemaking are directly required by state law; 3) no contract or delegation agreement covers the topic that is the subject of this rulemaking; and 4) the rulemaking is authorized by specific sections of THSC, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the Statutory Authority section of this preamble.

Because the proposed rules place no involuntary requirements on the regulated community, the adopted rules would 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. In addition, none of these proposed amendments place additional financial burdens on the regulated community.

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of substantial compliance as required in Texas Government Code, §2001.035. The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The specific purpose of these proposed rules is to amend sections of the Texas Administrative Code, which would incorporate the federal Tier 3 emission standards into the program requirements as allowed under THSC, §382.210(c) and limit LIRAP applicants to receive no more than $600 in assistance annually per vehicle to make the emissions-related repairs needed to pass the required annual emissions inspection. The proposed rules would substantially advance this stated purpose by amending sections in Chapter 114, Subchapters A and C to include revisions of the definitions, to include the federal Tier 3 emissions standards, and to specify the amount of LIRAP funds to be granted per vehicle per year.

Texas Government Code, §2007.003(b)(4) provides that Texas Government Code, Chapter 2007 does not apply to this pro-

posed rulemaking because it is an action reasonably taken to fulfill an obligation mandated by state law. THSC, Chapter 382 requires the commission with the Texas Department of Public Safety to establish and authorize a commissioner's court of a participating county to implement a LIRAP subject to agency oversight. Additionally, Chapter 382 specifies that the commission shall adopt guidelines that recommend a minimum and maximum amount for repair assistance. Consequently, the proposed rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4). Nevertheless, the commission further evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a "taking" under Texas Government Code, Chapter 2007. Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking would not burden (constitutionally), nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In addition, because the subject proposed regulations do not provide more stringent requirements they do not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these proposed rules would not constitute a taking under Texas Government Code, Chapter 2007. For these reasons, Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the amendments are editorial and procedural in nature and will not have a substantive effect on commission actions subject to the CMP and is, therefore, consistent with the CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

This rulemaking will not impact facilities with air emissions that have applicable (federal or state) requirements with the Federal Operating Permit (30 TAC Chapter 122).

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on October 20, 2016, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www1.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2016-031-114-AI. The comment period closes on October 24, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Alison Stokes, Air Quality Planning Section, at (512) 239-2428.

SUBCHAPTER A. DEFINITIONS

30 TAC §114.7

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC, and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendment is also proposed under Texas Health and Safety Code (THSC), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air. Finally, the amendment is proposed under THSC, §382.209, which establishes and authorizes the LIRAP; THSC, §382.210, which provides the implementation guidelines for the LIRAP; and THSC, §382.213, which outlines the requirements for disposition of retired vehicles.

The proposed amendment implements THSC, §§382.011, 382.017, 382.209, 382.210, and 382.213.

§114.7. Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this chapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in Subchapter C, Division 2 of this chapter (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program) have the following meanings, unless the context clearly indicates otherwise.

(1) Affected county--A county with a motor vehicle emissions inspection and maintenance program established under Texas Transportation Code, §548.301.

(2) Automobile dealership--A business that regularly and actively buys, sells, or exchanges vehicles at an established and permanent location as defined under Texas Transportation Code, §503.301. The term includes a franchised motor vehicle dealer and an independent motor vehicle dealer.

(3) Car--A motor vehicle, other than a golf cart, truck or bus, designed or used primarily for the transportation of persons. A passenger van or sports utility vehicle may be considered a car under this section.

(4) Commercial vehicle--A vehicle that is owned or leased in the regular course of business of a commercial or business entity.

(5) Destroyed--Crushed, shredded, scrapped, or otherwise dismantled to render a vehicle, vehicle's engine, or emission control components permanently and irreversibly incapable of functioning as originally intended.

(6) Dismantled--Extraction of parts, components, and accessories for use in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program or sold as used parts.

(7) Electric vehicle--A motor vehicle that draws propulsion energy only from a rechargeable energy storage system.

(8) Emissions control equipment--Relating to a motor vehicle that is subject to §114.50(a) of this title (relating to Vehicle Emissions Inspection Requirements). If the vehicle is so equipped, these include: exhaust gas recirculation system, power control module, catalytic converter, oxygen sensors, evaporative purge canister, positive crankcase ventilation valve, and gas cap.

(9) Engine--The fuel-based mechanical power source of a motor vehicle that is subject to §114.50(a) of this title (relating to Vehicle Emissions Inspection Requirements), which includes the crankcase, cylinder block, and cylinder head(s) and their initial internal components, the oil pan and cylinder head valve covers, and the intake and exhaust manifolds.

(10) Fleet vehicle--A motor vehicle operated as one of a group that consists of more than ten motor vehicles and that is owned and operated by a public or commercial entity or by a private entity other than a single household.

(11) Hybrid vehicle--A motor vehicle that draws propulsion energy from both gasoline or conventional diesel fuel and a rechargeable energy storage system.

(12) LIRAP--Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program.

(13) LIRAP fee--The portion of the vehicle emissions inspection fee that is required to be remitted to the state at the time of annual vehicle registration, as authorized by Texas Health and Safety Code, §382.202, in counties participating in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program.

(14) LIRAP fee termination date--The first day of the month for the month that the Texas Department of Motor Vehicles issues registration notices without the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) fee, as defined in this section, in a participating county opting out of the LIRAP.

(15) LIRAP opt-out effective date--The date upon which a county that was participating in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) becomes a non-participating county, which occurs when the grant contract between the county and the executive director, established in §114.64(a) of this title (relating to LIRAP Requirements), is ended, but no earlier than the LIRAP fee termination effective date.

(16) Motor vehicle--A fully self-propelled vehicle having four wheels that has as its primary purpose the transport of a person, persons, or property on a public highway.

(17) Natural gas vehicle--A motor vehicle that uses only compressed natural gas or liquefied natural gas as fuel.

(18) Non-participating county--An affected county that has either:

(A) not opted into the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) authorized by Texas Health and Safety Code, §382.209; or

(B) opted out of the LIRAP according to the procedures specified in §114.64(g) of this title (relating to LIRAP Requirements) and has been released from all program requirements, including assessment of the LIRAP fee as defined in this section and participation in LIRAP grant programs.

(19) Participating county--An affected county in which the commissioners court by resolution has chosen to implement a Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) authorized by Texas Health and Safety Code, §382.209. An affected county that is in the process of opting out of the LIRAP is considered a participating county until the LIRAP opt-out effective date as defined in this section.

(20) Proof of sale--A notice of sale or transfer filed with the Texas Department of Motor Vehicles [~~Transportation~~] as required under Texas Transportation Code, §503.005, or if unavailable, an affidavit from the selling dealer or documents approved by the commission.

(21) Proof of transfer--A TCEQ form that identifies the vehicle to be destroyed and tracks the transfer of the vehicle to the recycler from the participating county, automobile dealer, and dismantler.

(22) Qualifying motor vehicle--A motor vehicle that meets the requirements for replacement in §114.64 of this title (relating to LIRAP Requirements).

(23) Recognized emissions repair facility--An automotive repair facility as provided in 37 Texas Administrative Code §23.51 (relating to Vehicle Emissions Inspection Requirements).

(24) Recycled--Conversion of metal or other material into raw material products that have prepared grades; an existing or potential economic value; and using these raw material products in the production of new products.

(25) Replacement vehicle--A vehicle that is in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 5 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04 or federal Tier 3, Bin 160 or cleaner Bin certification under 40 Code of Federal Regulations (CFR) §86.1811-17 [~~, as published in the February 10, 2000, Federal Register~~]; has a gross vehicle weight rating of less than 10,000 pounds; have an odometer reading of not more than 70,000 miles; the total cost does not exceed $35,000 and up to $45,000 for hybrid, electric, or natural gas vehicles, or vehicles certified as Tier 2, Bin 3 or cleaner Bin certification under 40 CFR [~~Code of Federal Regulations~~] §86.1811-04 or federal Tier 3, Bin 85 or cleaner Bin certification under 40 CFR §86.1811-17 [~~, as published in the February 10, 2000, issue of the Federal Register (65 FR 6698)~~]; has passed a Texas Department of Public Safety motor vehicle safety inspection or safety and emissions inspection within the 15-month period before the application is submitted.

(26) Retrofit--To equip, or the equipping of, an engine or an exhaust or fuel system with new, emissions-reducing parts or equipment designed to reduce air emissions and improve air quality, after the manufacture of the original engine or exhaust or fuel system, so long as the parts or equipment allow the vehicle to meet or exceed state and federal air emissions reduction standards.

(27) Retrofit equipment--Emissions-reducing equipment designed to reduce air emissions and improve air quality that is approved by the United States Environmental Protection Agency and is installed after the manufacture of the original engine, exhaust, or fuel system.

(28) Total cost--The total amount of money paid or to be paid for the purchase of a motor vehicle as set forth as the sales price in the form entitled "Application for Texas Certificate of Title" promulgated by the Texas Department of Motor Vehicles [~~Transportation~~]. In a transaction that does not involve the use of that form, the term means an amount of money that is equivalent, or substantially equivalent, to the amount that would appear as the sales price on the application for Texas Certificate of Title if that form were used.

(29) Truck--A motor vehicle having a gross vehicle weight rating of less than 10,000 pounds and designed primarily for the transport of persons and cargo.

(30) Vehicle--A motor vehicle subject to §114.50(a) of this title (relating to Vehicle Emissions Inspection Requirements).

(31) Vehicle owner--For the purposes of repair assistance or retrofit, the person who holds the Certificate of Title for the vehicle and/or the operator who is granted possession and is authorized to make repairs under a lease or purchase agreement; and for the purposes of accelerated retirement, the person who holds the Certificate of Title for the vehicle.

(32) Vehicle retirement facility--A facility that, at a minimum, is licensed, certified, or otherwise authorized by the Texas Department of Motor Vehicles [~~Transportation~~] to destroy, recycle, or dismantle vehicles.

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, 2016.

TRD-201604715
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 239-2613

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SUBCHAPTER C. VEHICLE INSPECTION AND MAINTENANCE; LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM; AND EARLY ACTION COMPACT COUNTIES

DIVISION 2. LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM

30 TAC §114.64

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC, and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendment is also proposed under Texas Health and Safety Code (THSC), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air. Finally, this rulemaking is proposed under THSC, §382.209, which establishes and authorizes the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program; THSC, §382.210, which provides the implementation guidelines for the LIRAP; and THSC, §382.213, which outlines the requirements for disposition of retired vehicles.

The proposed amendment implements THSC, §§382.011, 382.017, 382.209, 382.210, and 382.213.

§114.64. LIRAP Requirements.

(a) Implementation. Participation in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) is voluntary. An affected county may choose to participate in the program at its discretion. Upon receiving a written request to participate in the LIRAP by a county commissioner's court, the executive director shall authorize the implementation of a LIRAP in the requesting county. The executive director and county shall enter into a grant contract for the implementation of the LIRAP.

(1) The grant contract must provide conditions, requirements, and projected funding allowances for the implementation of the LIRAP.

(2) A participating county may contract with an entity approved by the executive director for services necessary to implement the LIRAP. A participating county or its designated entity shall demonstrate to the executive director that, at a minimum, the county or its designated entity has provided for appropriate measures for determining applicant eligibility and repair effectiveness and ensuring against fraud.

(3) The participating county shall remain the contracted entity even if the county contracts with another county or another entity approved by the executive director to administer the LIRAP.

(b) Repair and retrofit assistance. A LIRAP must provide for monetary or other compensatory assistance to eligible vehicle owners for repairs directly related to bringing certain vehicles that have failed a required emissions test into compliance with emissions requirements or for installing retrofit equipment on vehicles that have failed a required emissions test, if practically and economically feasible, in lieu of or in combination with repairs performed to bring a vehicle into compliance with emissions requirements. Vehicles under the LIRAP must be repaired or retrofitted at a recognized emissions repair facility. To determine eligibility, the participating county or its designated entity shall

make applications available for LIRAP participants. The application, at a minimum, must require the vehicle owner to demonstrate that:

(1) the vehicle has failed a [~~vehicle~~] required emissions test within 30 days of application submittal;

(2) the vehicle can be driven under its own power to the emissions inspection station or vehicle retirement facility;

(3) the vehicle is currently registered in and has been registered in the participating program county for at least 12 of the 15 months immediately preceding the application for assistance;

(4) the vehicle has passed the safety portion of the Texas Department of Public Safety (DPS) motor vehicle safety and emissions inspection as recorded in the Vehicle Inspection Report [~~(VIR)~~], or provide assurance that actions will be taken to bring the vehicle into compliance with safety requirements;

(5) the vehicle owner's net family income is at or below 300% of the federal poverty level; and

(6) any other requirements of the participating county or the executive director are met.

(c) Accelerated vehicle retirement. A LIRAP must provide monetary or other compensatory assistance to eligible vehicle owners to be used toward the purchase of a replacement vehicle.

(1) To determine eligibility, the participating county or its designated entity shall make applications available for LIRAP participants. The application, at a minimum, must require the vehicle owner to demonstrate that:

(A) the vehicle meets the requirements under subsection (b)(1) - (3) and (5) of this section;

(B) the vehicle has passed a DPS motor vehicle safety or safety and emissions inspection within 15 months prior to application submittal; and

(C) any other requirements of the participating county or the executive director are met.

(2) Eligible vehicle owners of pre-1996 model year vehicles that pass the required United States Environmental Protection Agency (EPA) Start-Up Acceleration Simulation Mode (ASM) standards emissions test, but would have failed the EPA Final ASM standards emissions test, or some other criteria determined by the commission, may be eligible for accelerated vehicle retirement and replacement compensation under this section.

(3) Notwithstanding the vehicle requirement provided under subsection (b)(1) of this section, an eligible vehicle owner of a vehicle that is gasoline powered and is at least 10 years old as determined from the current calendar year (i.e., 2010 minus 10 years equals 2000) and meets the requirements under subsection (b)(2), (3), and (5) of this section, may be eligible for accelerated vehicle retirement and compensation.

(4) Replacement vehicles must:

(A) be in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 5 or cleaner Bin certification under 40 Code of Federal Regulations (CFR) §86.1811-04 or federal Tier 3, Bin 160 or cleaner Bin certification under 40 CFR §86.1811-17 [~~, as published in the February 10, 2000, issue of the *Federal Register* (65 FR 6698)~~];

(B) have a gross vehicle weight rating of less than 10,000 pounds;

(C) have an odometer reading of not more than 70,000 miles;

(D) be a vehicle, the total cost of which does not exceed $35,000 or [~~and~~] up to $45,000 for hybrid, electric, or natural gas vehicles, or vehicles certified as Tier 2, Bin 3 or cleaner Bin certification under 40 CFR [~~Code of Federal Regulations~~] §86.1811-04 or federal Tier 3, Bin 85 or cleaner Bin certification under 40 CFR §86.1811-17 [~~, as published in the February 10, 2000, issue of the *Federal Register* (65 FR 6698)~~]; and

(E) have passed a DPS motor vehicle safety inspection or safety and emissions inspection within the 15-month period before the application is submitted.

(d) Compensation. The participating county shall determine eligibility and approve or deny the application promptly. If the requirements of subsection (b) or (c) of this section are met and based on available funding, the county shall authorize monetary or other compensations to the eligible vehicle owner.

(1) Compensations must be:

(A) no more than $600 and no less than $30 per vehicle annually to be used for emission-related repairs or retrofits performed at recognized emissions repair facilities, including diagnostics tests performed on the vehicle; or

(B) based on vehicle type and model year of a replacement vehicle for the accelerated retirement of a vehicle meeting the requirements under this subsection. Only one retirement compensation can be used toward one replacement vehicle annually per applicant. The maximum amount toward a replacement vehicle must not exceed:

(i) $3,000 for a replacement car of the current model year or previous three model years, except as provided by clause (iii) of this subparagraph;

(ii) $3,000 for a replacement truck of the current model year or the previous two model years, except as provided by clause (iii) of this subparagraph; and

(iii) $3,500 for a replacement hybrid, electric, natural gas, and federal Tier 2, Bin 3 or cleaner Bin certification under 40 CFR [~~Code of Federal Regulations~~] §86.1811-04 or federal Tier 3, Bin 85 or cleaner Bin certification under 40 CFR §86.1811-17 [~~, as published in the February 10, 2000, issue of the *Federal Register* (65 FR 6698)~~] vehicle of the current model year or the three previous model years.

(2) Vehicle owners shall be responsible for paying the first $30 of emission-related repairs or retrofit costs that may include diagnostics tests performed on the vehicle.

(3) For accelerated vehicle retirement, provided that the compensation levels in paragraph (1)(B) of this subsection are met and minimum eligibility requirements under subsection (c) of this section are met, a participating county may set a specific level of compensation or implement a level of compensation schedule that allows flexibility. The following criteria may be used for determining the amount of financial assistance:

(A) model year of the vehicle;

(B) miles registered on the vehicle's odometer;

(C) fair market value of the vehicle;

(D) estimated cost of emission-related repairs necessary to bring the vehicle into compliance with emission standards;

(E) amount of money the vehicle owner has already spent to bring the vehicle into compliance, excluding the cost of the vehicle emissions inspection; and

(F) vehicle owner's income.

(e) Reimbursement for repairs and retrofits. A participating county shall reimburse the appropriate recognized emissions repair facility for approved repairs and retrofits within 30 calendar days of receiving an invoice that meets the requirements of the county or designated entity. Repaired or retrofitted vehicles must pass a DPS safety and emissions inspection before the recognized emissions repair facility is reimbursed. In the event that the vehicle does not pass the emissions retest after diagnosed repairs are performed, the participating county has the discretion, on a case-by-case basis, to make payment for diagnosed emissions repair work performed.

(f) Reimbursements for replacements. A participating county shall ensure that funds are transferred to a participating automobile dealership no later than 10 business days after the county receives proof of the sale, proof of transfer to a dismantler, and any administrative documents that meet the requirements of the county or designated entity. A list of all administrative documents must be included in the agreements that are entered into by the county or designated entity and the participating automobile dealerships.

(1) A participating county shall provide an electronic means for distributing replacement funds to a participating automobile dealership once all program criteria have been met. The replacement funds may be used as a down payment toward the purchase of a replacement vehicle. Participating automobile dealers shall be located in the State of Texas. Participation in the LIRAP by an automobile dealer is voluntary.

(2) Participating counties shall develop a document for confirming a person's eligibility for purchasing a replacement vehicle and for tracking such purchase.

(A) The document must include at a minimum, the full name of applicant, the vehicle identification number of the retired vehicle, expiration date of the document, the program administrator's contact information, and the amount of money available to the participating vehicle owner.

(B) The document must be presented to a participating dealer by the person seeking to purchase a replacement vehicle before entering into negotiations for a replacement vehicle.

(C) A participating dealer who relies on the document issued by the participating county has no duty to confirm the eligibility of the person purchasing a replacement vehicle in the manner provided by this section.

(g) Opting out of the LIRAP. Participation in the LIRAP is voluntary. A participating county may opt out of the program. Procedures to release a participating county from the LIRAP shall be initiated upon the receipt of a written request to the executive director by the county commissioner's court in a participating county.

(1) A written request to opt out of the LIRAP shall request release from the LIRAP fee as defined in §114.7 of this title (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions) and the grant contract established in subsection (a) of this section. The written request shall include one of the following possible LIRAP opt-out effective dates as defined in §114.7 of this title:

(A) the LIRAP fee termination effective date as defined in §114.7 of this title; or

(B) the last day of the legislative biennium in which the LIRAP fee termination effective date as defined in §114.7 of this title occurred.

(2) Upon receipt of a written request to be released from participation in the LIRAP, the executive director shall notify, in writing, with a copy sent to the requesting county, the Texas Department of Motor Vehicles [~~(DMV)~~], DPS, and the Legislative Budget Board of Texas that the LIRAP fee should no longer be collected for vehicles undergoing inspection and registration in the affected county.

(3) A county opting out of the LIRAP remains a participating county until the LIRAP opt-out effective date as defined in §114.7 of this title, on which date the county is no longer subject to the LIRAP fee, and the grant contract established in subsection (a) of this section is ended. Not more than 90 days after a county's LIRAP opt-out effective date, the unspent balance of allocated LIRAP funds for that county will be returned to the commission unless the county opting out has entered into an official inter-county elective agreement with other participating counties in the same region to share allocated LIRAP funds. If the county opting out has entered into an official inter-county elective agreement with other participating counties in the same region to share allocated LIRAP funds, then the portion of LIRAP allocations that is shared and unspent as of the LIRAP opt-out effective date will be redistributed among the remaining participating counties that are part of that agreement. This redistribution of funds will occur not more than 90 days after a county's LIRAP opt-out effective date.

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, 2016.

TRD-201604717
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 239-2613

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.335

The Comptroller of Public Accounts proposes amendments to §3.335, concerning property used in a qualifying data center; temporary state sales tax exemption. This section is being amended to implement House Bill 2712, 84th Legislature, 2015. Effective June 1, 2015, Tax Code, §151.3595 was enacted to provide a temporary exemption from the sales and use tax for certain tangible personal property related to large data center projects. New language is found in the title of the rule and throughout subsections (a) - (l) to address the exemption applicable to qualifying large data center projects. This section

is also amended to add language consistent with Tax Code, §151.359 and to define previously undefined terms.

Subsection (a) is amended throughout to be applicable to both qualifying data centers and qualifying large data center projects.

Subsection (a)(1)(A) is amended to specify the existing date is applicable only to qualifying data centers and new subparagraph (B) is added to identify the date prior to which purchases will not be considered toward the total capital investment required by qualifying large data center projects. Subsequent subparagraphs are relettered accordingly.

Paragraph (3) is amended to delete the size requirement from the definition of data center so the remaining definition applies to both qualifying data centers and qualifying large data center projects. The deleted language from paragraph (3) is added to subsection (d).

Paragraph (6) is amended to use the defined term "data center."

Paragraph (7)(B) is amended to apply only to qualifying data centers.

Paragraph (7)(C) is added to explain how the term "qualifying job" applies to qualifying large data center projects. This subparagraph implements Tax Code, §151.3595(a)(4).

Paragraph (8) is added to define the term "qualifying large data center project." Subsequent paragraphs are renumbered accordingly.

Paragraph (12) is added to define the term "shared employment responsibilities." The definition is based on Labor Code, §91.032

Subsection (b) is amended throughout to apply to both qualifying data centers and qualifying large data center projects.

Paragraph (1) is added to explain that the exemption available for qualifying data centers is only for state sales tax while qualifying large data center projects are exempt from both state and local sales tax. The remaining paragraphs are renumbered accordingly. Renumbered paragraph (2) is amended for consistency with paragraph (1). Subparagraph (A) is amended to address the change in the title of Form 01-929. Subparagraphs (K) and (L) are amended to add the term "described in this section" for consistency with Tax Code, §151.359 and Tax Code, §151.3595.

Subsection (c)(6) is added to be consistent with Tax Code, §151.359 and Tax Code, §151.3595 and subsequent paragraphs are renumbered accordingly. This subsection provides tangible personal property incorporated into real property or an improvement to real estate is not subject to the exemption unless otherwise exempt pursuant to subsection (b).

Subsection (d) is amended to apply only to qualifying data centers. Paragraph (2) is added to include the square footage requirements previously set out in subsection (a)(3). Subsequent paragraphs are renumbered accordingly. Subsection (d) is further amended to correct a grammatical error.

Subsection (e) is added to identify the requirements for qualifying large data center projects. The remaining subsections are relettered accordingly.

Relettered subsection (f) is amended to include qualifying large data center projects and to identify the appropriate application form for certification as a qualifying large data center project.

Relettered subsection (g) is amended throughout to be applicable to both qualifying data centers and qualifying large data center projects. Paragraph (3) is added to identify the exemption period applicable to qualifying large data center projects. The remaining paragraphs are renumbered accordingly. Renumbered paragraph (4) is amended to identify the requirements subject to verification.

Relettered subsection (h) is amended throughout to include qualifying large data center projects. Paragraphs (1) and (3) are amended to address the change in the title of Form 01-929 and to adjust internal references because of renumbering changes. Paragraph (4) is amended to correct a grammatical error. Paragraphs (3) and (4) are also amended to change "retailer" to "sellers" for consistency.

Relettered subsection (i) is amended throughout to be applicable to both qualifying data centers and qualifying large data centers. The specific requirements are deleted and reference to subsection (d) for qualifying data centers and subsection (e) for qualifying large data center projects is added.

Relettered subsection (j) is amended throughout to be applicable to both qualifying data centers and qualifying large data center projects and adds an additional documentation requirement for a qualifying large data center project.

Relettered subsection (k) is amended to be applicable to both qualifying data centers and qualifying large data center projects.

Relettered subsection (l) is amended to apply only to qualifying data centers. Language is added to clarify the subsection does not apply to qualifying large data center projects.

Relettered subsection (m) is amended to be applicable to both qualifying data centers and qualifying large data center projects.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by conforming the rule to current statutes and clarifying agency policy. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, 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 amendments are proposed under Tax Code §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.0022 (Application to Other Laws Administered by Comptroller), which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of provisions of Tax Code, Title 2 (State Taxation), and taxes, fees, or other charges or refunds which the comptroller administers under other law.

The amendments implement Tax Code, §151.359 (Property Used in Certain Data Centers; Temporary Exemption) and Tax Code §151.3595 (Property Used in Certain Large Data Center Projects; Temporary Exemption).

§3.335. Property Used in a Qualifying Data Center or Qualifying Large Data Center Project; Temporary [~~State~~] Sales Tax Exemption.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Capital investment--The amount paid to acquire capital or fixed assets that are purchased for use in the operation of a qualifying data center or qualifying large data center projects, and that, for U.S. federal income tax purposes, qualify as §179, §1245, or §1250 property, as those terms are defined in Internal Revenue Code, §§179(d)(1), 1245(a)(3), and 1250(c), respectively. Examples include, but are not limited to, land, buildings, furniture, machinery, and equipment used for the processing, storage, and distribution of data, and labor used specifically to construct or refurbish such property. The term does not include:

(A) property purchased before September 1, 2013, for a qualifying data center;

(B) property purchased before May 1, 2015, for a qualifying large data center project;

(C) [~~(B)~~] property purchased by a qualifying owner, qualifying operator, or qualifying occupant from persons or legal entities related to the purchaser by ownership or common control;

(D) [~~(C)~~] property that is leased under an operating lease; or

(E) [~~(D)~~] expenditures for routine and planned maintenance required to maintain regular business operations.

(2) County average weekly wage--The average weekly wage in a county for all jobs during the most recent four quarterly periods for which data is available, as computed by the Texas Workforce Commission, at the time a qualifying owner, qualifying operator, or qualifying occupant creates a job used to qualify under this section.

(3) Data center--A facility [~~At least 100,000 square feet of space in a single building, or portion of a single building,~~] that:

(A) is or will be located in this state;

(B) is or will be specifically constructed or refurbished for use primarily to house servers, related equipment, and support staff for the processing, storage, and distribution of data;

(C) will be used by a single qualifying occupant for the processing, storage, and distribution of data;

(D) will not be used primarily by a telecommunications provider to house tangible personal property that is used to deliver telecommunications services; and

(E) has or will have an uninterruptible power source, generator backup power, a sophisticated fire suppression and prevention system, and enhanced physical security that includes restricted access, video surveillance, and electronic systems.

(4) Permanent job--An employment position for which an Internal Revenue Service Form W-2 must be issued, that will exist for at least five years after the date the job is created. A permanent job will be considered to exist for at least five years after the date the job is created if during the five-year period any vacancy which occurs is filled within 120 days of the date of vacancy.

(5) Primarily--More than 50% of the time.

(6) Qualifying data center--A data center [~~facility~~] that the comptroller certifies as meeting each of the requirements in subsection (d) of this section.

(7) Qualifying job--

(A) A new, full-time job created by a qualifying owner, qualifying operator, or qualifying occupant of a qualifying data center or qualifying large data center project that:

(i) is a permanent job;

(ii) is located in the same county in Texas in which the associated qualifying data center or qualifying large data center project is located;

(iii) will provide at least 1,820 hours of employment a year to a single employee;

(iv) pays at least 120% of the county average weekly wage, as defined by paragraph (2) of this subsection, for the county in which the job is located;

(v) is not transferred from one county in Texas to another county in Texas; and

(vi) is not created to replace a qualifying job that was previously held by another employee.

(B) For a qualifying data center, the [~~The~~] term includes a new employment position staffed by a third-party employer if the employment position meets the requirements of subparagraph (A) of this paragraph and if there is a written contract between the third-party employer and a qualifying owner, qualifying operator, or qualifying occupant of the associated qualifying data center which:

(i) provides for shared employment responsibilities between the third-party employer and the qualifying owner, qualifying operator, or qualifying occupant; and

(ii) provides that the third-party employment position is permanently assigned to the associated qualifying data center or another location operated by the qualifying owner, qualifying operator, or qualifying occupant within the county where the data center is located for the term of the written contract.

(C) For a qualifying large data center project, the term includes a new employment position staffed by a third party employer if the employment position meets the requirements of subparagraph (A) of this paragraph and if there is a written contract between the third-party employer and a qualifying owner, qualifying operator, or qualifying occupant of the associated large data center project that provides that the employment position is permanently assigned to an associated qualifying large data center project.

(8) Qualifying large data center project--A data center that the comptroller certifies as meeting each of the requirements in subsection (e) of this section.

(9) [~~(8)~~] Qualifying operator--A person who controls access to a qualifying data center or qualifying large data center project, regardless of whether that person owns each item of tangible personal property located at the qualifying data center or qualifying large data center project. A qualifying operator may also be the qualifying owner.

(10) [~~(9)~~] Qualifying owner--A person who owns the building in which a qualifying data center or qualifying large data center project is located. A qualifying owner may also be the qualifying operator.

(11) [~~(10)~~] Qualifying occupant--A person who:

(A) contracts with either a qualifying owner or qualifying operator to place, or cause to be placed, tangible personal property at the qualifying data center or qualifying large data center project for use by the occupant. The qualifying occupant may also be the qual-

ifying owner or the qualifying operator of the same [~~qualifying~~] data center; and

(B) is the sole occupant of the qualifying data center or qualifying large data center project. A qualifying occupant may provide data storage and processing services, but may not sublease to a third party any real or tangible personal property located within the area of a building designated by the qualifying occupant, qualifying owner, or qualifying operator as part of the qualifying data center or qualifying large data center project. For example, a qualifying occupant may not sell or lease excess servers or server space, including the provision of dedicated servers, at the qualifying data center to third parties. If a single occupant leases 150,000 square feet of space in a building for use as a qualifying data center, that occupant may not use 100,000 square feet for its own qualifying use and sublease the remaining 50,000 square feet to a third party, even if the third party will also use the space as a data center. An occupant may, however, lease 150,000 square feet of space in a building and, during the certification process, formally designate 100,000 square feet or more of the space as the area to be used as its qualifying data center. The occupant could then sublease the space not designated for use as the qualifying data center to a third party without causing the qualifying data center to lose its certification as a qualifying data center. Tangible personal property purchased for use in the space outside the area designated for use as a qualifying data center would not qualify for exemption under this section.

(12) Shared employment responsibilities--

(A) The qualifying owner, qualifying operator, or qualifying occupant of a qualifying data center, individually or jointly as set out in the applicable third-party employment contract, and the third-party employer share:

(i) the right of direction and control of third-party employees assigned to the qualifying data center or other location operated by the qualifying owner, qualifying operator, or qualifying occupant within the county where the data center is located;

(ii) the right to hire, fire, discipline, and reassign third-party employees assigned to the qualifying data center or other location operated by the qualifying owner, qualifying operator, or qualifying occupant within the county where the data center is located; and

(iii) the right of direction and control over the adoption of employment and safety policies and the management of workers' compensation claims, claim filings, and related procedures for third-party employees assigned to the qualifying data center or other location operated by the qualifying owner, qualifying operator, or qualifying occupant within the county where the data center is located.

(B) The term does not preclude the qualifying data center from exercising the right of direction and control of all employees, including third-party employees, as necessary to conduct business, discharge any applicable fiduciary duty, or comply with any licensure, regulatory, or statutory requirement.

(b) Exemption.

(1) The exemption under this subsection for qualifying data centers only applies to Texas state sales and use taxes. See Tax Code, §151.359 (Property Used in Certain Data Centers; Temporary Exemption). The exemption under this subsection for qualifying large data center projects applies to Texas state and local sales and use taxes. See Tax Code, §151.3595 (Property Used in Certain Large Data Center Projects; Temporary Exemption).

(2) [~~(1)~~] Tangible personal property purchased by a qualifying owner, qualifying operator, or qualifying occupant for installation at, incorporation into, or in the case of subparagraph (A) of this paragraph, use in a qualifying data center or qualifying large data center project is exempted from the applicable taxes as specified in (b)(1) of this section [~~state sales and use tax imposed by Tax Code, Chapter 151~~] if the tangible personal property is necessary and essential to the operation of the qualifying data center or qualifying large data center project and is:

(A) electricity. A predominant use study is required to differentiate between taxable and nontaxable use of electricity from a single meter unless the qualifying data center or qualifying large data center project is a stand-alone facility of which the qualifying occupant is the sole inhabitant. For more information regarding predominant use studies, refer to §3.295 of this title (relating to Natural Gas and Electricity). The qualifying owner, qualifying operator, or qualifying occupant of a stand-alone qualifying data center or qualifying large data center project is not required to perform a predominant use study and may, in lieu of tax, supply its utility provider with a properly completed Exemption Certificate for Qualifying Data Centers or Qualifying Large Data Center [~~Center~~] Projects [~~Exemption Certificate~~], Form 01-929. Refer to subsection (h) [~~(g)~~] of this section regarding exemption certificates;

(B) an electrical system;

(C) a cooling system;

(D) an emergency generator;

(E) hardware or a distributed mainframe computer or server;

(F) a data storage device;

(G) network connectivity equipment;

(H) a rack, cabinet, and raised floor system;

(I) a peripheral component or system;

(J) software;

(K) a mechanical, electrical, or plumbing system that is necessary to operate any tangible personal property described in this subsection;

(L) any other item of equipment or system necessary to operate any tangible personal property described in this subsection, including a fixture; or

(M) a component part of any tangible personal property described in this subsection.

(3) [~~(2)~~] The purchase price of qualifying tangible personal property, including building materials, electricity, and other items, jointly procured by a qualifying owner, qualifying operator, or qualifying occupant for installation at, incorporation into, or use in one or more qualifying data centers or qualifying large data center projects is to be apportioned among the purchasers for purposes of subsection (i) [~~(h)~~](2) of this section, concerning liability in the event of revocation.

(c) Exclusion from exemption. The exemption in subsection (b) of this section does not apply to:

(1) office equipment or supplies;

(2) maintenance or janitorial supplies or equipment;

(3) equipment or supplies used primarily in sales activities or transportation activities;

(4) tangible personal property on which the purchaser has received or has a pending application for a refund under Tax Code, §151.429 (Tax Refunds for Enterprise Projects);

(5) tangible personal property that is rented or leased for a term of one year or less; [~~or~~]

(6) tangible personal property not otherwise exempted under subsection (b) that is incorporated into real estate or into an improvement of real estate; or

(7) [~~(6)~~] notwithstanding Tax Code, §151.3111 (Services on Certain Exempted Personal Property), a taxable service that is performed on tangible personal property exempted under this section.

(d) Eligibility for certification as a qualifying [~~of a~~] data center. The comptroller may certify an applicant facility as a qualifying data center if the following requirements are met:

(1) the [~~The~~] applicants declare on the application for certification that the facility does or will meet all of the requirements for the definition of the term "data center" set out in subsection (a)(3) of this section;[~~.~~]

(2) the data center is at least 100,000 square feet of space located in a single building or portion of a single building;

(3) [~~(2)~~] the [~~The~~] qualifying owner, qualifying operator, or qualifying occupant, jointly or independently, have agreed to, on or after September 1, 2013:

(A) create at least 20 qualifying jobs on or before the fifth anniversary of the date that the data center is certified by the comptroller as a qualifying data center; and

(B) make a capital investment of at least $200 million in that particular data center over a five-year period beginning on the date the data center is certified by the comptroller as a qualifying data center. For purposes of this subparagraph:

(i) an expenditure can only be counted toward the capital investment requirement if invoiced to the qualifying owner, qualifying operator, or qualifying occupant on or after the date the comptroller certifies the data center; and

(ii) purchases by a related corporate entity on behalf of a qualifying owner, qualifying operator, or qualifying occupant cannot be included in the capital investment calculation; and[~~.~~]

(4) [~~(3)~~] the [~~The~~] applicant facility does not have an agreement under which it receives a limitation on appraised value of property for ad valorem tax purposes under Tax Code, Chapter 313 (Texas Economic Development Act).

(e) Eligibility for certification as a qualifying large data center project. The comptroller may certify an applicant facility as a qualifying large data center project if the following requirements are met:

(1) the applicants declare on the application for certification that the facility does or will meet all of the requirements for the definition of the term "data center" set out in subsection (a)(3) of this section;

(2) the data center is composed of one or more buildings totaling at least 250,000 square feet of space located or to be located on a single parcel of land or on contiguous parcels of land that are commonly owned or owned by affiliation with the qualifying operator;

(3) the qualifying owner, qualifying operator, or qualifying occupant, jointly or independently, have agreed to:

(A) on or after June 1, 2015, create at least 40 qualifying jobs on or before the fifth anniversary of the date that the data center submits the application to the comptroller;

(B) on or after May 1, 2015, make a capital investment of at least $500 million in that particular data center over a five-year period beginning on the date the data center submits the application to the comptroller. For purposes of this subparagraph:

(i) an expenditure can only be counted toward the capital investment requirement if invoiced to the qualifying owner, qualifying operator, or qualifying occupant on or after the date the data center submits the application to the comptroller; and

(ii) purchases by a related corporate entity on behalf of a qualifying owner, qualifying operator, or qualifying occupant cannot be included in the capital investment calculation; and

(C) on or after June 1, 2015, contract for at least 20 megawatts of transmission capacity for operation of the qualifying large data center project; and

(4) the applicant facility does not have an agreement under which it receives a limitation on appraised value of property for ad valorem tax purposes under Tax Code, Chapter 313 (Texas Economic Development Act).

(f) [~~(e)~~] Application process.

(1) A facility that is eligible to be certified under subsection (d) of this section as a qualifying data center or under subsection (e) of this section as a qualifying large data center project by the comptroller shall apply for a registration number on the Texas Application for Certification as a Qualifying Data Center, Form AP-233 or Texas Application for Certification as a Qualifying Large Data Center Project, Form AP-236, as applicable. The application must include:

(A) the name, contact information, and authorized signature for the qualifying occupant and, if applicable, the name, contact information, and authorized signature for the qualifying owner and the qualifying operator who will claim the exemption authorized under this section;

(B) a business proposal summarizing the plan of the qualifying owner, qualifying operator, or qualifying occupant, independently or jointly, to meet the requirements in subsection (d) of this section for qualifying data centers or subsection (e) of this section for qualifying large data center projects [~~capital investment and jobs creation requirements in subsection (d)(2) of this section~~]; and

(C) a statement confirming that the qualifying owner, qualifying operator, and qualifying occupant, as applicable, agree that the statute of limitation provided in Tax Code, §111.201 (Assessment Limitation) on the assessment of tax, penalty, and interest on purchases made tax-free under this section is tolled from the date of certification until the fifth anniversary of that date, or until such time as the comptroller is able to verify that the requirements set out in subsection (d) of this section for qualifying data centers or subsection (e) of this section for qualifying large data center projects [~~job creation and capital investment requirements in subsection (d)(2) of this section~~] have been met, whichever is later.

(2) Information provided on and with the application under this subsection is confidential under Tax Code, §151.027 (Confidentiality of Tax Information).

(3) After certifying the qualifying data center or qualifying large data center project, the comptroller will issue a separate registration number to the qualifying owner, the qualifying operator, and the qualifying occupant, as applicable, based on the registration number of the qualifying data center or qualifying large data center project.

(g) [~~(f)~~] Temporary [~~state sales and use tax~~] exemption dates. The [~~state sales and use tax~~] exemption under this section is temporary. The exemption applies to qualifying [~~qualified~~] purchases made by a qualifying owner, qualifying operator, or qualifying occupant during

the exemption period applicable to the qualifying data center or qualifying large data center project.

(1) The [~~A qualifying data center's~~] exemption period for a qualifying data center or qualifying large data center project begins on the date the data center is certified by the comptroller.

(2) A qualifying data center's exemption period ends 10 or 15 years from the certification date, depending on the amount of capital investment made.

(A) A qualifying data center's sales tax exemption expires 10 years from the date of certification by the comptroller if the qualifying owner, qualifying operator, or qualifying occupant, independently or jointly, makes a capital investment of at least $200 million, but less than $250 million, within the first five years after certification.

(B) A qualifying data center's sales tax exemption expires 15 years from the date of certification by the comptroller if the qualifying owner, qualifying operator, or qualifying occupant, independently or jointly, makes a capital investment of at least $250 million within the first five years after certification.

(3) A qualifying large data center project's exemption period ends 20 years from the date of certification by the comptroller provided the qualifying owner, qualifying operator, or qualifying occupant, independently or jointly, makes a capital investment of at least $500 million within the first five years after certification.

(4) [~~(3)~~] The comptroller will audit each qualifying data center and qualifying large data center project at its five year anniversary to verify the amount of capital investment made and to verify that the jobs creation requirement has been met. The comptroller will also verify the contract for transmission capacity for operation of a qualifying large data center project [~~in the qualifying data center and to verify that the jobs creation requirement has been met~~].

(5) [~~(4)~~] Once all jobs are created, as required under subsection (d)[~~(2)(A)~~] of this section for qualifying data centers or subsection (e) of this section for qualifying large data center projects, the qualifying owner, qualifying operator, or qualifying occupant, either singly or jointly, must timely notify the comptroller by providing a properly completed Qualifying Data Center or Qualifying Large Data Center Project Job Creation Report, 01-160.

(h) [~~(g)~~] Exemption certificate. Each person who is eligible to claim an exemption authorized by this section must hold a registration number issued by the comptroller.

(1) To claim an [~~a state sales tax~~] exemption under this section for the purchase of tangible personal property, a qualifying owner, qualifying operator, or qualifying occupant must provide to the seller of a taxable item an Exemption Certificate for [~~a~~] Qualifying Data Centers or Qualifying Large Data Center Projects [~~Center Exemption Certificate~~], Form 01-929. The exemption certificate does not apply to local sales and use tax for qualifying data centers. Refer to subsection (l)[~~(k)~~] of this section for more information regarding local sales and use tax.

(2) To claim the exemption, a qualifying owner, qualifying operator, or qualifying occupant must properly complete all required information on the exemption certificate, including:

(A) the data center registration number;

(B) the registration number of the qualifying owner, qualifying operator, or qualifying occupant, as applicable;

(C) the address of the qualifying owner, qualifying operator, or qualifying occupant, as applicable;

(D) a description of the tangible personal property to be purchased;

(E) the signature of the purchaser; and

(F) the date of the purchase.

(3) The properly completed Exemption Certificate for Qualifying Data Centers or Qualifying Large Data Center Projects [~~qualifying data center exemption certificate~~] is the seller's [~~retailer's~~] documentation that it made a tax-exempt sale in good faith. The seller [~~retailer~~] is required to keep the exemption certificate and all other financial records relating to the exempt sale, including records to document the seller's [~~retailer's~~] collection of the local sales and use tax for qualifying data centers. The seller [~~retailer~~] must be able to match invoices of tax-exempt sales to the purchaser's exemption certificate. This may be accomplished by the seller [~~retailer~~] entering the purchaser's registration number on each invoice.

(4) A seller [~~retailer~~] is not required to accept an exemption certificate from a qualifying data center or qualifying large data center project [~~exemption certificate~~]. If a seller [~~retailer~~] chooses not to accept an exemption certificate issued by a purchaser, the purchaser may instead request a refund of the tax paid from the comptroller. Sellers [~~Retailers~~] shall provide an Assignment of Right to Refund, Form 00-985, when the [~~if a state sales tax~~] exemption is not provided to a qualifying owner, qualifying operator, or qualifying occupant when qualifying purchases of tangible personal property are made.

(i) [~~(h)~~] Revocation. By filing an application for certification of a qualifying data center or qualifying large data center project, the qualifying owner, qualifying operator, and qualifying occupant, as applicable, commit to meeting the requirements set out in subsection (d) of this section for qualifying data centers or subsection (e) of this section for qualifying large data center projects and certify the data center [~~making a capital investment of at least $200 million in the data center during its first five years, creating at least 20 permanent, full-time, qualifying jobs, and maintaining those jobs for at least five years. In addition, these entities commit to ensuring that the facility meets the definition of a "data center" in subsection (a)(3) of this section and~~] will be occupied by a single qualifying occupant over the life of the [~~qualifying data center's sales tax~~] exemption. For more information, refer to subsection (d) of this section for qualifying data center requirements, subsection (e) of this section for qualifying large data center project requirements, and subsection (g) of this section for the term of the exemption.

(1) Failure to meet one or more of the certification requirements described in subsection (d) of this section for qualifying data centers or subsection (e) of this section for qualifying large data center projects will result in termination of the [~~data center's~~] certification and the revocation of all related qualifying owner, qualifying operator, and qualifying occupant exemption registration numbers.

(2) Each entity that has a registration number revoked will be liable for unpaid [~~state~~] sales or use taxes, including penalty and interest from the date of purchase, on all items purchased tax-free under this section, back to the original date of certification of the data center as a qualifying data center or qualifying large data center project.

(3) If a formal waiver of the statute of limitations under Tax Code, §111.203 (Agreements to Extend Period of Limitation) is deemed necessary to insure against a loss of revenue to the state in the event that a data center's certification is revoked, by allowing the comptroller to verify, prior to the expiration of the statute of limitations on assessment, that each of the requirements in subsection (d) of this section for qualifying data centers or subsection (e) of this section for qualifying large data center projects has been met, then the failure to

execute a timely statutory waiver will also result in the termination of the data center's certification and the revocation of all related registration numbers.

(j) [~~(i)~~] Documentation and record retention.

(1) In accordance with Tax Code, §111.0041 (Records; Burden to Produce and Substantiate Claims) and §151.025 (Records Required to be Kept), all qualifying occupants, qualifying owners, and qualifying operators of a qualifying data center or qualifying large data center project must keep complete records to document any and all tax-exempt purchases made under this [~~the qualifying data center~~] exemption, and to confirm payment of the local sales and use tax on such purchases by qualifying data centers. See §3.281 of this title (relating to Records Required; Information Required) for additional guidance.

(2) In addition, each qualifying owner, qualifying operator, and qualifying occupant of a qualifying data center or qualifying large data center project must keep complete records to document the applicable capital investment made in the qualifying data center or qualifying large data center project;[~~,~~] the creation of the required number of applicable [~~20~~] qualifying jobs including[~~, and~~] the retention of those jobs for a period of at least five years; and documentation of the contract for the applicable transmission capacity for qualifying large data center projects. These records must be retained until the data center's certification expires. For example, a qualifying owner, qualifying operator, or qualifying occupant should keep comprehensive records of capital investment expenditures, such as contracts, invoices, and sales receipts, and employment records regarding job creation, including associated third-party employer positions.

(3) In the event the comptroller revokes the certification of a qualifying data center or qualifying large data center project, the records of all qualifying owners, qualifying operators, and qualifying occupants must be retained until all assessments have been resolved.

(k) [~~(j)~~] Successor Liability. A purchaser of a qualifying owner, qualifying operator, or qualifying occupant's business or stock of goods in a qualifying data center or qualifying large data center project is subject to Tax Code, §111.020 (Tax Collection on Termination of Business).

(l) [~~(k)~~] Local tax. The state sales and use tax exemption for qualifying owners, qualifying operators, or qualifying occupant of a qualifying data center does not apply to local sales and use tax. Local sales and use tax must be paid on the purchase of any tangible personal property that qualifies for exemption from state sales and use tax under this section. This subsection is not applicable to qualifying large data center projects.

(m) [~~(l)~~] An entity that qualifies for the [~~state sales and use tax~~] exemption under this section as a qualifying data center or qualifying large data center project is not eligible to receive a limitation on appraised value of property for ad valorem tax purposes under Tax Code, Chapter 313 (Texas Economic Development Act).

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, 2016.

TRD-201604772

Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 475-0387

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 217, Subchapter A, Motor Vehicle Titles: §217.3, Motor Vehicle Titles; Subchapter B, Motor Vehicle Registration: §217.28, Vehicle Registration Renewal; §217.40, Special Registrations; §217.42, Construction Machinery Criteria; §217.45, Specialty License Plates, Symbols, Tabs, and Other Devices; §217.47, Vehicle Emissions Enforcement System; §217.52, Marketing of Specialty License Plates through a Private Vendor; §217.54, Registration of Fleet Vehicles; and §217.56, Registration Reciprocity Agreements; Subchapter D, Non-repairable and Salvage Motor Vehicles: §217.82, Definitions; §217.84, Application for Non-repairable or Salvage Vehicle Title; and §217.86, Dismantling, Scrapping, or Destruction of Motor Vehicles; Subchapter E, Title Liens and Claims: §217.103, Restitution Liens; and Subchapter H, Deputies: §217.163, Full Service Deputies.

EXPLANATION OF PROPOSED AMENDMENTS

In general, these nonsubstantive amendments are proposed throughout Chapter 217, Subchapters A, B, D, E, and H to correct statutory and rule citations, to correct one error, and to update rule language; and for consistency with capitalization and style throughout department rules.

SECTION BY SECTION ANALYSIS

The proposed amendment to §217.3(2)(A) adds quotes to the term "motor vehicle." The proposed amendments to §217.3(4)(C) change the word "forty" to the numeral "40." The proposed amendments also delete the word "body" from §217.3(4)(C)(i) for consistency with the language in §217.3(4)(C)(ii).

The proposed amendment to §217.28(e)(2) changes the word "percent" to the symbol "%" for consistency with other sections within the chapter. The proposed amendment to §217.28(e)(3) changes the word "twelve" to the numeral "12."

The proposed amendments to §217.40(b)(1)(C) change the word "percent" to the symbol "%" in four instances. The proposed amendments also change the word "semi-trailers" to "semitrailers" for consistency with statute.

The proposed amendment to §217.42 changes "$5.00" to "$5."

The proposed amendments to §217.45 change "Board" to "board" multiple times for consistency.

The proposed amendment to §217.47 updates an incorrect statutory citation to the Health and Safety Code.

The proposed amendments to §217.52 change "Board" to "board" multiple times and change the word "twenty-four" to the numeral "24."

The proposed amendments to §217.54 change "semi-trailers" to "semitrailers" for consistency with statute and change the word "twenty-five" to the numeral "25" in three instances.

The proposed amendments to §217.56 change the word "semi-trailer" to "semitrailer" in three instances and change "Board" to "board" throughout.

The proposed amendment to §217.82 corrects the citation for the definition of "motor vehicle" in Transportation Code, Chapter 501.

The proposed amendments in §217.84 update incorrect statutory citations to the Transportation Code.

The proposed amendment to §217.86 updates an incorrect rule citation.

The proposed amendment to §217.103(e) changes "$5.00" to "$5" for consistency. The proposed amendment to §217.103(g) corrects the section title of §217.106.

The proposed amendments to §217.163(a) update incorrect references to subsection (j) due to the addition of a subsection during adoption of the rule that resulted in a renumbering of the subsections and also updates the reference to an agreement to an addendum to reflect the rule language as adopted.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Jeremiah Kuntz, Director, Vehicle Titles and Registration Division has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments as proposed.

PUBLIC BENEFIT AND COST

Mr. Kuntz has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be accuracy and clarity of the department's rules. There are no anticipated economic costs for persons required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses or micro-businesses.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to *rules@txdmv.gov.* The deadline for receipt of comments is 5:00 p.m. on October 24, 2016.

SUBCHAPTER A. MOTOR VEHICLE TITLES

43 TAC §217.3

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department; and more specifically, Transportation Code, §501.0041, which provides the department may adopt rules to administer Transportation Code, Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Transportation Code, Chapter 502, Registration of Vehicles; and Transportation Code, §520.0071, which provides the board by rule shall prescribe the classification types of deputies performing titling and registration duties, the duties and obligations of deputies, the type and amount of any bonds that may be required by a county tax assessor-collector for a deputy to perform titling and registration duties, and the fees that may be charged or retained by deputies.

CROSS REFERENCE TO STATUTE

Health and Safety Code, §382.202 and §382.203; and Transportation Code, §§501.002, 501.091, 501.1001, and 501.1002.

§217.3. Motor Vehicle Titles.

Unless otherwise exempted by law or this chapter, the owner of any motor vehicle that is required to be registered in accordance with Transportation Code, Chapter 502, shall apply for a Texas title in accordance with Transportation Code, Chapter 501.

(1) Motorcycles, motor-driven cycles, autocycles, and mopeds.

(A) The title requirements of a motorcycle, motor-driven cycle, autocycle, and moped are the same requirements prescribed for any motor vehicle.

(B) A vehicle that meets the criteria for a moped and has been certified as a moped by the Department of Public Safety will be registered and titled as a moped. If the vehicle does not appear on the list of certified mopeds published by that agency, the vehicle will be treated as a motorcycle for title and registration purposes.

(2) Farm vehicles.

(A) The term "motor vehicle" [~~motor vehicle~~] does not apply to implements of husbandry, which may not be titled.

(B) Farm tractors owned by agencies exempt from registration fees in accordance with Transportation Code, §502.453, are required to be titled and registered with "Exempt" license plates issued in accordance with Transportation Code, §502.451.

(C) Farm tractors used as road tractors to mow rights of way or used to move commodities over the highway for hire are required to be registered and titled.

(D) Farm semitrailers with a gross weight of more than 4,000 pounds that are registered in accordance with Transportation Code, §502.146, may be issued a Texas title.

(3) Neighborhood electric vehicles. The title requirements of a neighborhood electric vehicle (NEV) are the same requirements prescribed for any motor vehicle.

(4) Trailers, semitrailers, and house trailers. Owners of trailers and semitrailers shall apply for and receive a Texas title for any stand alone (full) trailer, including homemade or shopmade full trailers, or any semitrailer having a gross weight in excess of 4,000 pounds. Owners of trailers having a gross weight of 4,000 pounds or less may

apply for and receive a Texas title. House trailer-type vehicles must meet the criteria outlined in subparagraph (C) of this paragraph to be titled.

(A) The rated carrying capacity will not be less than one-third of its empty weight.

(B) Mobile office trailers, mobile oil field laboratories, and mobile oil field bunkhouses are not designed as dwellings, but are classified as commercial semitrailers and must be registered and titled as commercial semitrailers if operated on the public streets and highways.

(C) House trailer-type vehicles and camper trailers must meet the following criteria in order to be titled.

(i) A house trailer-type vehicle designed for living quarters and that is eight body feet or more in width and 40 [~~forty~~ ~~body~~] feet or more in length (not including the hitch), is classified as a manufactured home or mobile home and is not eligible for a Texas title under Transportation Code, Chapter 501.

(ii) A house trailer-type vehicle that is less than eight feet in width or less than 40 [~~forty~~] feet in length is classified as a travel trailer and shall be registered and titled.

(iii) A camper trailer shall be titled as a house trailer and shall be registered with travel trailer license plates.

(iv) A recreational park model type trailer that is primarily designed as temporary living quarters for recreational, camping or seasonal use, is built on a single chassis, and is 400 square feet or less when measured at the largest horizontal projection when in the set up mode shall be titled as a house trailer and may be issued travel trailer license plates.

(5) Assembled vehicles.

(A) An assembled vehicle is a vehicle assembled from the three basic component parts (motor, frame, and body), except that a motorcycle must have a frame and motor, and a trailer or travel trailer will have no motor, and that is:

(i) assembled from new or used materials and parts by someone not regulated as a motor vehicle manufacturer;

(ii) altered or modified to the extent that it no longer reflects the original manufacturer's configuration; or

(iii) assembled from a kit even if a Manufacturer's Certificate of Origin or Manufacturer's Statement of Origin is provided.

(B) A newly assembled vehicle, for which a title has never been issued in this jurisdiction or any other, may be titled if:

(i) it is assembled and completed with a body, motor, and frame, except that a motorcycle must have a frame and motor, and a trailer or travel trailer will have no motor;

(ii) it is not created from different vehicle classes, (as established by the Federal Highway Administration, except as provided by subparagraph (C) of this paragraph), that were never engineered or manufactured to be combined with one another;

(iii) it has all safety components required by federal law during the year of assembly, unless the vehicle qualifies and is registered as a custom vehicle or street rod in accordance with Transportation Code, §504.501;

(iv) it is not a vehicle described by paragraph (6) of this section;

(v) for a vehicle assembled with a body, motor, and frame, the applicant provides proof, on a form prescribed by the department, of a safety inspection performed by an Automotive Service Excellence (ASE) technician with valid certification as a Certified Master Automobile and Light Truck Technician, certifying that the vehicle:

(I) is structurally stable;

(II) meets the necessary conditions to be operated safely on the roadway; and

(III) is equipped and operational with all equipment required by statute or rule as a condition of sale during the year the vehicle was assembled unless it is being inspected pursuant to Subchapter G of this chapter;

(vi) for a vehicle assembled with a body, motor, and frame, the applicant submits a copy of the Certified Master Automobile and Light Truck Technician's ASE certification;

(vii) the applicant submits a Rebuilt Vehicle Statement; and

(viii) the applicant submits the following to establish the vehicle's vehicle identification number:

(I) an Application for Assigned or Reassigned Number, and Notice of Assigned Number or Installation of Reassigned Vehicle Identification Number, on forms prescribed by the department; or

(II) acceptable proof, as established by the department, of a vehicle identification number assigned by the manufacturer of the component part by which the vehicle will be identified.

(C) Component parts from the following vehicle classes may be interchanged with one another or used in the creation of an assembled vehicle:

(i) 2-axle, 4-tire passenger cars;

(ii) 2-axle, 4 tire pickups, panels and vans;

(iii) 6-tire dually pickups, of which the rear tires are dual tires.

(D) The ASE inspection for a newly assembled vehicle required under subparagraph (B) of this paragraph is in addition to the inspection required by Transportation Code, Chapter 548, except a vehicle that qualifies and is registered as a custom vehicle or street rod in accordance with Transportation Code, §504.501, is exempt from the inspection required under Transportation Code, Chapter 548, for the duration the vehicle is registered as such.

(E) An assembled vehicle which has previously been titled and/or registered in this or any other jurisdiction is subject to subparagraph (B)(i) - (iv) of this paragraph, but is not subject to subparagraph (B)(v) - (viii); however, it is subject to the inspection required by Transportation Code, Chapter 548, except a vehicle that qualifies and is registered as a custom vehicle or street rod in accordance with Transportation Code, §504.501.

(F) An assembled vehicle will be titled using the year it was assembled as the model year and "ASSEMBLED" or "ASVE" as the make of the vehicle unless the body of the vehicle is established to the department's satisfaction to be an original body from a particular year and make. An assembled vehicle utilizing an original body may be titled by the year and the make of the original body but must reflect a "RECONSTRUCTED" remark. An assembled vehicle not utilizing an original body may obtain a title with a "REPLICA" remark featuring the year and make of the replica if the vehicle resembles a prior model year vehicle. This subparagraph applies regardless of how the

vehicle's model year or make was previously identified in this or any other jurisdiction.

(6) Not Eligible for Title. The following are not eligible for a Texas title regardless of the vehicle's previous title and/or registration in this or any other jurisdiction:

(A) vehicles that are missing or are stripped of their motor, frame, or body, to the extent that it materially alters the manufacturer's original design or makes the vehicle unsafe for on-road operation as determined by the department;

(B) vehicles designed or determined by the department to be a dune buggy;

(C) vehicles designed or determined by the department to be for on-track racing, unless such vehicles meet Federal Motor Vehicle Safety Standards (FMVSS) for on-road use and are reported to the National Highway Traffic Safety Administration;

(D) vehicles designed or determined by the department to be for off-road use only, unless specifically defined as a "motor vehicle" in Transportation Code, Chapter 501; or

(E) vehicles assembled, built, constructed, rebuilt, or reconstructed in any manner with:

(i) a body or frame from a vehicle which is a "nonrepairable motor vehicle" as that term is defined in Transportation Code, §501.091(9); or

(ii) a motor or engine from a vehicle which is flood damaged, water damaged, or any other term which may reasonably establish the vehicle from which the motor or engine was obtained is a loss due to a water related event.

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, 2016.

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 465-5665

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SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §§217.28, 217.40, 217.42, 217.45, 217.47, 217.52, 217.54, 217.56

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department; and more specifically, Transportation Code, §501.0041, which provides the department may adopt rules to administer Transportation Code, Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Transportation Code, Chapter 502, Registration of Vehicles; and Transportation Code, §520.0071, which provides the board by rule shall prescribe the classification types of deputies performing titling and registration duties, the duties and obligations of deputies, the type and amount of any bonds that may be required by a county tax assessor-collector for a deputy to perform titling and registration duties, and the fees that may be charged or retained by deputies.

CROSS REFERENCE TO STATUTE

Health and Safety Code, §382.202 and §382.203; and Transportation Code, §§501.002, 501.091, 501.1001, and 501.1002.

§217.28. Vehicle Registration Renewal.

(a) To renew vehicle registration, a vehicle owner must apply, prior to the expiration of the vehicle's registration, to the tax assessor-collector of the county in which the owner resides.

(b) The department will send a license plate renewal notice, indicating the proper registration fee and the month and year the registration expires, to each vehicle owner prior to the expiration of the vehicle's registration.

(c) The license plate renewal notice should be returned by the vehicle owner to the appropriate county tax assessor-collector or to the tax assessor-collector's deputy, either in person or by mail, unless the vehicle owner renews via the Internet. The renewal notice must be accompanied by the following documents and fees:

(1) registration renewal fees prescribed by law;

(2) any local fees or other fees prescribed by law and collected in conjunction with registration renewal; and

(3) evidence of financial responsibility required by Transportation Code, §502.046, unless otherwise exempted by law.

(d) If a renewal notice is lost, destroyed, or not received by the vehicle owner, the vehicle may be registered if the owner presents personal identification acceptable to the county tax assessor-collector. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(e) Renewal of expired vehicle registrations.

(1) In accordance with Transportation Code, §502.407, a vehicle with an expired registration may not be operated on the highways of the state after the fifth working day after the date a vehicle registration expires.

(2) If the owner has been arrested or cited for operating the vehicle without valid registration then a 20% [~~20 percent~~] delinquency penalty is due when registration is renewed, the full annual fee will be collected, and the vehicle registration expiration month will remain the same.

(3) If the county tax assessor-collector or the department determines that a registrant has a valid reason for being delinquent in registration, the vehicle owner will be required to pay for 12 [~~twelve~~] months' registration. Renewal will establish a new registration expiration month that will end on the last day of the eleventh month following the month of registration renewal.

(4) If the county tax assessor-collector or the department determines that a registrant does not have a valid reason for being delinquent in registration, the full annual fee will be collected and the vehicle registration expiration month will remain the same.

(5) If a vehicle is registered in accordance with Transportation Code, §§502.255, 502.431, 502.435, 502.454, 504.315, 504.401, 504.405, 504.505, or 504.515, and if the vehicle's registration is renewed more than one month after expiration of the previous registration, the registration fee will be prorated.

(6) Evidence of a valid reason may include receipts, passport dates, and military orders. Valid reasons may include:

(A) extensive repairs on the vehicle;

(B) the person was out of the country;

(C) the vehicle is used only for seasonal use;

(D) military orders;

(E) storage of the vehicle;

(F) a medical condition such as an extended hospital stay; and

(G) any other reason submitted with evidence that the county tax assessor-collector or the department determines is valid.

§217.40. Special Registrations.

(a) Purpose and scope. Transportation Code, Chapter 502, Subchapters C and I, charge the department with the responsibility of issuing special registration permits which shall be recognized as legal registration for the movement of motor vehicles not authorized to travel on Texas public highways for lack of registration or for lack of reciprocity with the state or country in which the vehicles are registered. For the department to efficiently and effectively perform these duties, this section prescribes the policies and procedures for the application and the issuance of temporary registration permits.

(b) Permit categories. The department will issue the following categories of special registration permits.

(1) Additional weight permits. The owner of a truck, truck tractor, trailer, or semitrailer may purchase temporary additional weight permits for the purpose of transporting the owner's own seasonal agricultural products to market or other points for sale or processing in accordance with Transportation Code, §502.434. In addition, such vehicles may be used for the transportation without charge of seasonal laborers from their place of residence, and materials, tools, equipment, and supplies from the place of purchase or storage, to a farm or ranch exclusively for use on such farm or ranch.

(A) Additional weight permits are valid for a limited period of less than one year.

(B) An additional weight permit will not be issued for a period of less than one month or extended beyond the expiration of a license plate issued under Transportation Code, Chapter 502.

(C) The statutory fee for an additional weight permit is based on a percentage of the difference between the owner's annual registration fee and the annual fee for the desired gross vehicle weight computed as follows:

(i) one-month (or 30 consecutive days)--10% [~~10 percent~~];

(ii) one-quarter (three consecutive months)--30% [~~30 percent~~];

(iii) two-quarters (six consecutive months)--60% [~~60 percent~~]; or

(iv) three-quarters (nine consecutive months)--90% [~~90 percent~~].

(D) Additional weight permits are issued for calendar quarters with the first quarter to begin on April 1st of each year.

(E) A permit will not be issued unless the registration fee for hauling the additional weight has been paid prior to the actual hauling.

(F) An applicant must provide proof of the applicant's Texas Agriculture or Timber Exemption Registration Number issued by the Texas Comptroller of Public Accounts. Proof of the registration number must be:

(i) legible;

(ii) current;

(iii) in the name of the person or dba in which the vehicle is or will be registered; and

(iv) verifiable through the online system established by the Comptroller.

(2) Annual permits.

(A) Transportation Code, §502.093, authorizes the department to issue annual permits to provide for the movement of foreign commercial vehicles that are not authorized to travel on Texas highways for lack of registration or for lack of reciprocity with the state or country in which the vehicles are registered. The department will issue annual permits:

(i) for a 12-month period designated by the department which begins on the first day of a calendar month and expires on the last day of the last calendar month in that annual registration period; and

(ii) to each vehicle or combination of vehicles for the registration fee prescribed by weight classification in Transportation Code, §502.253 and §502.255.

(B) The department will not issue annual permits for the importation of citrus fruit into Texas from a foreign country except for foreign export or processing for foreign export.

(C) The following exemptions apply to vehicles displaying annual permits.

(i) Currently registered foreign semitrailers having a gross weight in excess of 6,000 pounds used or to be used in combination with commercial motor vehicles or truck tractors having a gross vehicle weight in excess of 10,000 pounds are exempted from the requirements to pay the token fee and display the associated distinguishing license plate provided for in Transportation Code, §502.255. An annual permit is required for the power unit only. For vehicles registered in combination, the combined gross weight may not be less than 18,000 pounds.

(ii) Vehicles registered with annual permits are not subject to the optional county registration fee under Transportation Code, §502.401; the optional county fee for transportation projects under Transportation Code, §502.402; or the optional registration fee for child safety under Transportation Code, §502.403.

(3) 72-hour permits and 144-hour permits.

(A) In accordance with Transportation Code, §502.094, the department will issue a permit valid for 72 hours or 144 hours for the movement of commercial motor vehicles, trailers, semitrailers, and motor buses owned by residents of the United States, Mexico, or Canada.

(B) A 72-hour permit or a 144-hour permit is valid for the period of time stated on the permit beginning with the effective day and time as shown on the permit registration receipt.

(C) Vehicles displaying 72-hour permits or 144-hour permits are subject to vehicle safety inspection in accordance with Transportation Code, §548.051, except for:

(i) vehicles currently registered in another state of the United States, Mexico, or Canada; and

(ii) mobile drilling and servicing equipment used in the production of gas, crude petroleum, or oil, including, but not limited to, mobile cranes and hoisting equipment, mobile lift equipment, forklifts, and tugs.

(D) The department will not issue a 72-hour permit or a 144-hour permit to a commercial motor vehicle, trailer, semitrailer, or motor bus apprehended for violation of Texas registration laws. Apprehended vehicles must be registered under Transportation Code, Chapter 502.

(4) Temporary agricultural permits.

(A) Transportation Code, §502.092, authorizes the department to issue a 30-day temporary nonresident registration permit to a nonresident for any truck, truck tractor, trailer, or semitrailer to be used in the movement of all agriculture products produced in Texas:

(i) from the place of production to market, storage, or railhead not more than 75 miles from the place of production; or

(ii) to be used in the movement of machinery used to harvest Texas-produced agricultural products.

(B) The department will issue a 30-day temporary nonresident registration permit to a nonresident for any truck, truck tractor, trailer, or semitrailer used to move or harvest farm products, produced outside of Texas, but:

(i) marketed or processed in Texas; or

(ii) moved to points in Texas for shipment from the point of entry into Texas to market, storage, processing plant, railhead or seaport not more than 80 miles from such point of entry into Texas.

(C) The statutory fee for temporary agricultural permits is one-twelfth of the annual Texas registration fee prescribed for the vehicle for which the permit is issued.

(D) The department will issue a temporary agricultural permit only when the vehicle is legally registered in the nonresident's home state or country for the current registration year.

(E) The number of temporary agricultural permits is limited to three permits per nonresident owner during any one vehicle registration year.

(F) Temporary agricultural permits may not be issued to farm licensed trailers or semitrailers [~~semi-trailers~~].

(5) One-trip permits. Transportation Code, §502.095, authorizes the department to temporarily register any unladen vehicle upon application to provide for the movement of the vehicle for one trip, when the vehicle is subject to Texas registration and not authorized to travel on the public roadways for lack of registration or lack of registration reciprocity.

(A) Upon receipt of the $5 fee, registration will be valid for one trip only between the points of origin and destination and intermediate points as may be set forth in the application and registration receipt.

(B) The department will issue a one-trip permit to a bus which is not covered by a reciprocity agreement with the state or country in which it is registered to allow for the transit of the vehicle only. The vehicle should not be used for the transportation of any passenger or property, for compensation or otherwise, unless such bus is operating under charter from another state or country.

(C) A one-trip permit is valid for a period up to 15 days from the effective date of registration.

(D) A one-trip permit may not be issued for a trip which both originates and terminates outside Texas.

(E) A laden motor vehicle or a laden commercial vehicle cannot display a one-trip permit. If the vehicle is unregistered, it must operate with a 72-hour or 144-hour permit.

(6) 30-day temporary registration permits. Transportation Code, §502.095, authorizes the department to issue a temporary registration permit valid for 30 days for a $25 fee. A vehicle operated on a 30-day temporary permit is not restricted to a specific route. The permit is available for:

(A) passenger vehicles;

(B) motorcycles;

(C) private buses;

(D) trailers and semitrailers with a gross weight not exceeding 10,000 pounds;

(E) light commercial vehicles not exceeding a gross weight of 10,000 pounds; and

(F) a commercial vehicle exceeding 10,000 pounds, provided the vehicle is operated unladen.

(c) Application process.

(1) Procedure. An owner who wishes to apply for a temporary registration permit for a vehicle which is otherwise required to be registered in accordance with this subchapter, must do so on a form prescribed by the department.

(2) Form requirements. The application form will at a minimum require:

(A) the signature of the owner;

(B) the name and complete address of the applicant; and

(C) the vehicle description.

(3) Fees and documentation. The application must be accompanied by:

(A) statutorily prescribed fees;

(B) evidence of financial responsibility:

(i) as required by Transportation Code, Chapter 502, Subchapter B, provided that all policies written for the operation of motor vehicles must be issued by an insurance company or surety company authorized to write motor vehicle liability insurance in Texas; or

(ii) if the applicant is a motor carrier as defined by §218.2 of this title (relating to Definitions), indicating that the vehicle is registered in compliance with Chapter 218, Subchapter B of this title (relating to Motor Carrier Registration); and

(C) any other documents or fees required by law.

(4) Place of application.

(A) All applications for annual permits must be submitted directly to the department for processing and issuance.

(B) Additional weight permits and temporary agricultural permits may be obtained by making application with the department through the county tax assessor-collectors' offices.

(C) 72-hour and 144-hour permits, one-trip permits, and 30-day temporary registration permits may be obtained by making

application either with the department or the county tax assessor-collectors' offices.

(d) Receipt for permit in lieu of registration. A receipt will be issued for each permit in lieu of registration to be carried in the vehicle during the time the permit is valid. A one-trip or 30-day trip permit must be displayed as required by Transportation Code, §502.095(f). If the receipt is lost or destroyed, the owner must obtain a duplicate from the department or from the county office. The fee for the duplicate receipt is the same as the fee required by Transportation Code, §502.058.

(e) Transfer of temporary permits.

(1) Temporary permits are non-transferable between vehicles and/or owners.

(2) If the owner of a vehicle displaying a temporary permit disposes of the vehicle during the time the permit is valid, the permit must be returned to the county tax assessor-collector office or department immediately.

(f) Replacement permits. Vehicle owners displaying annual permits may obtain replacement permits if an annual permit is lost, stolen, or mutilated.

(1) The fee for a replacement annual permit is the same as for a replacement number plate, symbol, tab, or other device as provided by Transportation Code, §502.060.

(2) The owner shall apply directly to the department in writing for the issuance of a replacement annual permit. Such request should include a copy of the registration receipt and replacement fee.

(g) Agreements with other jurisdictions. In accordance with Transportation Code, §502.091, and Chapter 648, the executive director of the department may enter into a written agreement with an authorized officer of a state, province, territory, or possession of a foreign country to provide for the exemption from payment of registration fees by nonresidents, if residents of this state are granted reciprocal exemptions. The executive director may enter into such agreement only upon:

(1) the approval of the governor; and

(2) making a determination that the economic benefits to the state outweigh all other factors considered.

(h) Border commercial zones.

(1) Texas registration required. A vehicle located in a border commercial zone must display a valid Texas registration if the vehicle is owned by a person who:

(A) owns a leasing facility or a leasing terminal located in Texas; and

(B) leases the vehicle to a foreign motor carrier.

(2) Exemption for trips of short duration. Except as provided by paragraph (1) of this subsection, a foreign commercial vehicle operating in accordance with Transportation Code, Chapter 648, is exempt from the display of a temporary registration permit if:

(A) the vehicle is engaged solely in the transportation of cargo across the border into or from a border commercial zone;

(B) for each load of cargo transported the vehicle remains in this state for:

(i) not more than 24 hours; or

(ii) not more than 48 hours, if:

(I) the vehicle is unable to leave this state within 24 hours because of circumstances beyond the control of the motor carrier operating the vehicle; and

(II) all financial responsibility requirements applying to this vehicle are satisfied;

(C) the vehicle is registered and licensed as required by the country in which the person that owns the vehicle is domiciled or is a citizen as evidenced by a valid metal license plate attached to the front or rear exterior of the vehicle; and

(D) the country in which the person who owns the vehicle is domiciled or is a citizen provides a reciprocal exemption for commercial motor vehicles owned by residents of Texas.

(3) Exemption due to reciprocity agreement. Except as provided by §217.40(h)(1) of this subsection, a foreign commercial motor vehicle in a border commercial zone in this state is exempt from the requirement of obtaining a Texas registration if the vehicle is currently registered in another state of the United States or a province of Canada with which this state has a reciprocity agreement that exempts a vehicle that is owned by a resident of this state and that is currently registered in this state from registration in the other state or province.

§217.42. Construction Machinery Criteria.

Construction machinery must meet the following criteria in order to qualify for the $5 [~~$5.00~~] machinery license plate: it must be an unconventional machine, such as those built from the ground up, designed and fabricated to perform a job relating to that type of construction. It is a vehicle that is not designed or used to tow or transport property or persons, other than those persons who may be required to operate such machinery in the function of its design and purpose. Machinery vehicles are vehicles which are actually designed for special construction purposes.

§217.45. Specialty License Plates, Symbols, Tabs, and Other Devices.

(a) Purpose and Scope. Transportation Code, Chapters 504 and 551, charge the department with providing specialty license plates, symbols, tabs, and other devices. For the department to perform these duties efficiently and effectively, this section prescribes the policies and procedures for the application, issuance, and renewal of specialty license plates, symbols, tabs, and other devices, through the county tax assessor-collectors, and establishes application fees, expiration dates, and registration periods for certain specialty license plates. This section does not apply to military license plates except as provided by §217.43 of this title (relating to Military Specialty License Plates).

(b) Initial application for specialty license plates, symbols, tabs, or other devices.

(1) Application Process.

(A) Procedure. An owner of a vehicle registered as specified in this subchapter who wishes to apply for a specialty license plate, symbol, tab, or other device must do so on a form prescribed by the director.

(B) Form requirements. The application form shall at a minimum require the name and complete address of the applicant.

(2) Fees and Documentation.

(A) The application must be accompanied by the prescribed registration fee, unless exempted by statute.

(B) The application must be accompanied by the statutorily prescribed specialty license plate fee. If a registration period is greater than 12 months, the expiration date of a specialty license plate, symbol, tab, or other device will be aligned with the registration period

and the specialty plate fee will be adjusted to yield the appropriate fee. If the statutory annual fee for a specialty license plate is $5 or less, it will not be prorated.

(C) Specialty license plate fees will not be refunded after an application is submitted and the department has approved issuance of the license plate.

(D) The application must be accompanied by prescribed local fees or other fees that are collected in conjunction with registering a vehicle, with the exception of vehicles bearing license plates that are exempt by statute from these fees.

(E) The application must include evidence of eligibility for any specialty license plates. The evidence of eligibility may include, but is not limited to:

(i) an official document issued by a governmental entity; or

(ii) a letter issued by a governmental entity on that agency's letterhead.

(F) Initial applications for license plates for display on Exhibition Vehicles must include a photograph of the completed vehicle.

(3) Place of application. Applications for specialty license plates may be made directly to the county tax assessor-collector, except that applications for the following license plates must be made directly to the department:

(A) County Judge;

(B) Federal Administrative Law Judge;

(C) State Judge;

(D) State Official;

(E) U.S. Congress--House;

(F) U.S. Congress--Senate; and

(G) U.S. Judge.

(4) Gift plates.

(A) A person may purchase general distribution specialty license plates as a gift for another person if the purchaser submits an application for the specialty license plates that provides:

(i) the name and address of the person who will receive the plates; and

(ii) the vehicle identification number of the vehicle on which the plates will be displayed.

(B) To be valid for use on a motor vehicle, the recipient of the plates must file an application with the county tax assessor-collector and pay the statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502, and this subchapter.

(c) Initial issuance of specialty license plates, symbols, tabs, or other devices.

(1) Issuance. On receipt of a completed initial application for registration, accompanied by the prescribed documentation and fees, the department will issue specialty license plates, symbols, tabs, or other devices to be displayed on the vehicle for which the license plates, symbols, tabs, or other devices were issued for the current registration period. If the vehicle for which the specialty license plates, symbols, tabs, or other devices are issued is currently registered, the owner must surrender the license plates currently displayed on the vehicle, along with the corresponding license receipt, before the specialty license plates may be issued.

(2) Classic Motor Vehicles, Classic Travel Trailers, Custom Vehicles, Street Rods, and Exhibition Vehicles.

(A) License plates. Texas license plates that were issued the same year as the model year of a Classic Motor Vehicle, Travel Trailer, Street Rod, or Exhibition Vehicle may be displayed on that vehicle under Transportation Code, §504.501 and §504.502, unless:

(i) the license plate's original use was restricted by statute to another vehicle type;

(ii) the license plate is a qualifying plate type that originally required the owner to meet one or more eligibility requirements; or

(iii) the alpha numeric pattern is already in use on another vehicle.

(B) Validation stickers and tabs. The department will issue validation stickers and tabs for display on license plates that are displayed as provided by subparagraph (A) of this paragraph.

(3) Number of plates issued.

(A) Two plates. Unless otherwise listed in subparagraph (B) of this paragraph, two specialty license plates, each bearing the same license plate number, will be issued per vehicle.

(B) One plate. One license plate will be issued per vehicle for all motorcycles and for the following specialty license plates:

(i) Antique Vehicle (includes Antique Auto, Antique Truck, Antique Motorcycle, and Antique Bus);

(ii) Classic Travel Trailer;

(iii) Rental Trailer;

(iv) Travel Trailer;

(v) Cotton Vehicle;

(vi) Disaster Relief;

(vii) Forestry Vehicle;

(viii) Golf Cart;

(ix) Log Loader; and

(x) Military Vehicle.

(C) Registration number. The identification number assigned by the military may be approved as the registration number instead of displaying Military Vehicle license plates on a former military vehicle.

(4) Assignment of plates.

(A) Title holder. Unless otherwise exempted by law or this section, the vehicle on which specialty license plates, symbols, tabs, or other devices is to be displayed shall be titled in the name of the person to whom the specialty license plates, symbols, tabs, or other devices is assigned, or a title application shall be filed in that person's name at the time the specialty license plates, symbols, tabs, or other devices are issued.

(B) Non-owner vehicle. If the vehicle is titled in a name other than that of the applicant, the applicant must provide evidence of having the legal right of possession and control of the vehicle.

(C) Leased vehicle. In the case of a leased vehicle, the applicant must provide a copy of the lease agreement verifying that the applicant currently leases the vehicle.

(5) Classification of neighborhood electric vehicles. The registration classification of a neighborhood electric vehicle, as defined by §217.3(3) of this title (relating to Motor Vehicle Titles) will be determined by whether it is designed as a 4-wheeled truck or a 4-wheeled passenger vehicle.

(6) Number of vehicles. An owner may obtain specialty license plates, symbols, tabs, or other devices for an unlimited number of vehicles, unless the statute limits the number of vehicles for which the specialty license plate may be issued.

(7) Personalized plate numbers.

(A) Issuance. The department will issue a personalized license plate number subject to the exceptions set forth in this paragraph.

(B) Character limit. A personalized license plate number may contain no more than six alpha or numeric characters or a combination of characters. Depending upon the specialty license plate design and vehicle class, the number of characters may vary. Spaces, hyphens, periods, hearts, stars, the International Symbol of Access, or silhouettes of the state of Texas may be used in conjunction with the license plate number.

(C) Personalized plates not approved. A personalized license plate number will not be approved by the executive director if the alpha-numeric pattern:

(i) conflicts with the department's current or proposed regular license plate numbering system;

(ii) would violate §217.27 of this title (relating to Vehicle Registration Insignia), as determined by the executive director; or

(iii) is currently issued to another owner.

(D) Classifications of vehicles eligible for personalized plates. Unless otherwise listed in subparagraph (E) of this paragraph, personalized plates are available for all classifications of vehicles.

(E) Categories of plates for which personalized plates are not available. Personalized license plate numbers are not available for display on the following specialty license plates:

(i) Amateur Radio (other than the official call letters of the vehicle owner);

(ii) Antique Motorcycle;

(iii) Antique Vehicle (includes Antique Auto, Antique Truck, and Antique Bus);

(iv) Apportioned;

(v) Cotton Vehicle;

(vi) Disaster Relief;

(vii) Farm Trailer (except Go Texan II);

(viii) Farm Truck (except Go Texan II);

(ix) Farm Truck Tractor (except Go Texan II);

(x) Fertilizer;

(xi) Forestry Vehicle;

(xii) Log Loader;

(xiii) Machinery;

(xiv) Permit;

(xv) Rental Trailer;

(xvi) Soil Conservation; and

(xvii) Texas Guard.

(F) Fee. Unless specified by statute, a personalized license plate fee of $40 will be charged in addition to any prescribed specialty license plate fee.

(G) Priority. Once a personalized license plate number has been assigned to an applicant, the owner shall have priority to that number for succeeding years if a timely renewal application is submitted to the county tax assessor-collector each year in accordance with subsection (d) of this section.

(d) Specialty license plate renewal.

(1) Renewal deadline. If a personalized license plate is not renewed within 60 days after its expiration date, a subsequent renewal application will be treated as an application for new personalized license plates.

(2) Length of validation. With the following exceptions, all specialty license plates, symbols, tabs, or other devices shall be valid for 12 months from the month of issuance or for a prorated period of at least 12 months coinciding with the expiration of registration.

(A) Five-year period. Antique Vehicle (includes Antique Auto, Antique Truck, and Antique Bus) and Antique Motorcycle license plates, Antique tabs, and registration numbers are issued for a five-year period.

(B) Seven-year period. Foreign Organization license plates and registration numbers are issued for a seven-year period.

(C) March expiration dates. The registration for Cotton Vehicle and Disaster Relief license plates expires each March 31.

(D) June expiration dates. The registration for the Honorary Consul license plate expires each June 30.

(E) September expiration dates. The registration for the Log Loader license plate expires each September 30.

(F) December expiration dates. The registration for the following license plates expires each December 31:

(i) County Judge;

(ii) Federal Administrative Law Judge;

(iii) State Judge;

(iv) State Official;

(v) U.S. Congress--House;

(vi) U.S. Congress--Senate; and

(vii) U.S. Judge.

(G) Except as otherwise provided in this paragraph, if a vehicle's registration period is other than 12 months, the expiration date of the specialty license plate, symbol, tab, or other device will be set to align it with the expiration of registration.

(3) Renewal.

(A) Renewal notice. Approximately 60 days before the expiration date of a specialty license plate, symbol, tab, or other device, the department will send each owner a renewal notice that includes the amount of the specialty plate fee and the registration fee.

(B) Return of notice. The owner must return the fee and any prescribed documentation to the tax assessor-collector of the county in which the owner resides, except that the owner of a vehicle with one of the following license plates must return the documentation and specialty license plate fee, if applicable, directly to the department and submit the registration fee to the county tax assessor-collector:

(i) County Judge;

(ii) Federal Administrative Law Judge;

(iii) State Judge;

(iv) State Official;

(v) U.S. Congress--House;

(vi) U.S. Congress--Senate; and

(vii) U.S. Judge.

(C) Expired plate numbers. The department will retain a specialty license plate number for 60 days after the expiration date of the plates if the plates are not renewed on or before their expiration date. After 60 days the number may be reissued to a new applicant. All specialty license plate renewals received after the expiration of the 60 days will be treated as new applications.

(D) Issuance of validation insignia. On receipt of a completed license plate renewal application and prescribed documentation, the department will issue registration validation insignia as specified in §217.27 unless this section or other law requires the issuance of new license plates to the owner.

(E) Lost or destroyed renewal notices. If a renewal notice is lost, destroyed, or not received by the vehicle owner, the specialty license plates, symbol, tab, or other device may be renewed if the owner provides acceptable personal identification along with the appropriate fees and documentation. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(e) Transfer of specialty license plates.

(1) Transfer between vehicles.

(A) Transferable between vehicles. The owner of a vehicle with specialty license plates, symbols, tabs, or other devices may transfer the specialty plates between vehicles by filing an application through the county tax assessor-collector if the vehicle to which the plates are transferred:

(i) is titled or leased in the owner's name; and

(ii) meets the vehicle classification requirements for that particular specialty license plate, symbol, tab, or other device.

(B) Non-transferable between vehicles. The following specialty license plates, symbols, tabs, or other devices are non-transferable between vehicles:

(i) Antique Vehicle license plates (includes Antique Auto, Antique Truck, and Antique Bus), Antique Motorcycle license plates, and Antique tabs;

(ii) Classic Auto, Classic Truck, Classic Motorcycle, Classic Travel Trailer, Street Rod, and Custom Vehicle license plates;

(iii) Forestry Vehicle license plates; and

(iv) Log Loader license plates.

(C) New specialty license plates. If the department creates a new specialty license plate under Transportation Code, §504.801, the department will specify at the time of creation whether the license plate may be transferred between vehicles.

(2) Transfer between owners.

(A) Non-transferable between owners. Specialty license plates, symbols, tabs, or other devices issued under Transportation Code, Chapter 504, Subchapters C, E, and F, are not transferable from one person to another except as specifically permitted by statute.

(B) New specialty license plates. If the department creates a new specialty license plate under Transportation Code, §504.801, the department will specify at the time of creation whether the license plate may be transferred between owners.

(3) Simultaneous transfer between owners and vehicles. Specialty license plates, symbols, tabs, or other devices are transferable between owners and vehicles simultaneously only if the owners and vehicles meet all the requirements in both paragraphs (1) and (2) of this subsection.

(f) Replacement.

(1) Application. When specialty license plates, symbols, tabs, or other devices are lost, stolen, or mutilated, the owner shall apply directly to the county tax assessor-collector for the issuance of replacements, except that Log Loader license plates must be reapplied for and accompanied by the prescribed fees and documentation.

(2) Temporary registration insignia. If the specialty license plate, symbol, tab, or other device is lost, destroyed, or mutilated to such an extent that it is unusable, and if issuance of a replacement license plate would require that it be remanufactured, the owner must pay the statutory replacement fee, and the department will issue a temporary tag for interim use. The owner's new specialty license plate number will be shown on the temporary tag unless it is a personalized license plate, in which case the same personalized license plate number will be shown.

(3) Stolen specialty license plates.

(A) The department or county tax assessor-collector will not approve the issuance of replacement license plates with the same personalized license plate number if the department's records indicate either the vehicle displaying the personalized license plates or the license plates are reported as stolen to law enforcement. The owner will be directed to contact the department for another personalized plate choice.

(B) The owner may select a different personalized number to be issued at no charge with the same expiration as the stolen specialty plate. On recovery of the stolen vehicle or license plates, the department will issue, at the owner's or applicant's request, replacement license plates, bearing the same personalized number as those that were stolen.

(g) License plates created after January 1, 1999. In accordance with Transportation Code, §504.702, the department will begin to issue specialty license plates authorized by a law enacted after January 1, 1999, only if the sponsoring entity for that license plate submits the following items before the fifth anniversary of the effective date of the law.

(1) The sponsoring entity must submit a written application. The application must be on a form approved by the director and include, at a minimum:

(A) the name of the license plate;

(B) the name and address of the sponsoring entity;

(C) the name and telephone number of a person authorized to act for the sponsoring entity; and

(D) the deposit.

(2) A sponsoring entity is not an agent of the department and does not act for the department in any matter, and the department does not assume any responsibility for fees or applications collected by a sponsoring entity.

(h) Assignment procedures for state, federal, and county officials.

(1) State Officials. State Official license plates contain the distinguishing prefix "SO." Members of the state legislature may be issued up to three sets of State Official specialty license plates with the distinguishing prefix "SO," or up to three sets of State Official specialty license plates that depict the state capitol, and do not display the distinguishing prefix "SO." An application by a member of the state legislature, for a State Official specialty license plate, must specify the same specialty license plate design for each applicable vehicle. State Official license plates are assigned in the following order:

(A) Governor;

(B) Lieutenant Governor;

(C) Speaker of the House;

(D) Attorney General;

(E) Comptroller;

(F) Land Commissioner;

(G) Agriculture Commissioner;

(H) Secretary of State;

(I) Railroad Commission Presiding Officer followed by the remaining members based on their seniority;

(J) Supreme Court Chief Justice followed by the remaining justices based on their seniority;

(K) Criminal Court of Appeals Presiding Judge followed by the remaining judges based on their seniority;

(L) Members of the State Legislature, with Senators assigned in order of district number followed by Representatives assigned in order of district number, except that in the event of redistricting, license plates will be reassigned; and

(M) Board of Education Presiding Officer followed by the remaining members assigned in district number order, except that in the event of redistricting, license plates will be reassigned.

(2) Members of the U.S. Congress.

(A) U.S. Senate license plates contain the prefix "Senate" and are assigned by seniority; and

(B) U.S. House license plates contain the prefix "House" and are assigned in order of district number, except that in the event of redistricting, license plates will be reassigned.

(3) Federal Judge.

(A) Federal Judge license plates contain the prefix "USA" and are assigned on a seniority basis within each court in the following order:

(i) Judges of the Fifth Circuit Court of Appeals;

(ii) Judges of the United States District Courts;

(iii) United States Bankruptcy Judges; and

(iv) United States Magistrates.

(B) Federal Administrative Law Judge plates contain the prefix "US" and are assigned in the order in which applications are received.

(C) A federal judge who retired on or before August 31, 2003, and who held license plates expiring in March 2004 may continue to receive federal judge plates. A federal judge who retired after August 31, 2003, is not eligible for U.S. Judge license plates.

(4) State Judge.

(A) State Judge license plates contain the prefix "TX" and are assigned sequentially in the following order:

(i) Appellate District Courts;

(ii) Presiding Judges of Administrative Regions;

(iii) Judicial District Courts;

(iv) Criminal District Courts; and

(v) Family District Courts and County Statutory Courts.

(B) A particular alpha-numeric combination will always be assigned to a judge of the same court to which it was originally assigned.

(C) A state judge who retired on or before August 31, 2003, and who held license plates expiring in March 2004 may continue to receive state judge plates. A state judge who retired after August 31, 2003, is not eligible for State Judge license plates.

(5) County Judge license plates contain the prefix "CJ" and are assigned by county number.

(6) In the event of redistricting or other plate reallocation, the department may allow a state official to retain that official's plate number if the official has had the number for five or more consecutive years.

(i) Development of new specialty license plates.

(1) Procedure. The following procedure governs the process of authorizing new specialty license plates under Transportation Code, §504.801, whether the new license plate originated as a result of an application or as a department initiative.

(2) Applications for the creation of new specialty license plates. An applicant for the creation of a new specialty license plate, other than a vendor specialty plate under §217.52 of this title (relating to Marketing of Specialty License Plates through a Private Vendor), must submit a written application on a form approved by the executive director. The application must include:

(A) the applicant's name, address, telephone number, and other identifying information as directed on the form;

(B) certification on Internal Revenue Service letterhead stating that the applicant is a not-for-profit entity;

(C) a draft design of the specialty license plate;

(D) projected sales of the plate, including an explanation of how the projected figure was established;

(E) a marketing plan for the plate, including a description of the target market;

(F) a licensing agreement from the appropriate third party for any intellectual property design or design element;

(G) a letter from the executive director of the sponsoring state agency stating that the agency agrees to receive and distribute revenue from the sale of the specialty license plate and that the use of the funds will not violate a statute or constitutional provision; and

(H) other information necessary for the board [~~Board~~] to reach a decision regarding approval of the requested specialty plate.

(3) Review process. The board: [~~Board:~~]

(A) will not consider incomplete applications;

(B) may request additional information from an applicant if necessary for a decision; and

(C) will consider specialty license plate applications that are restricted by law to certain individuals or groups of individuals (qualifying plates) using the same procedures as applications submitted for plates that are available to everyone (non-qualifying plates).

(4) Request for additional information. If the board [~~Board~~] determines that additional information is needed, the applicant must return the requested information not later than the requested due date. If the additional information is not received by that date, the board [~~Board~~] will return the application as incomplete unless the board: [~~Board:~~]

(A) determines that the additional requested information is not critical for consideration and approval of the application; and

(B) approves the application, pending receipt of the additional information by a specified due date.

(5) Board decision. The board's [~~Board's~~] decision will be based on:

(A) compliance with Transportation Code, §504.801;

(B) the proposed license plate design, including:

(i) whether the design appears to meet the legibility and reflectivity standards established by the department;

(ii) whether the design meets the standards established by the department for uniqueness;

(iii) other information provided during the application process;

(iv) the criteria designated in §217.27 as applied to the design; and

(v) whether a design is similar enough to an existing plate design that it may compete with the existing plate sales; and

(C) the applicant's ability to comply with Transportation Code, §504.702, relating to the required deposit or application that must be provided before the manufacture of a new specialty license plate.

(6) Public comment on proposed design. All proposed plate designs will be considered by the board [~~Board~~] as an agenda item at a regularly or specially called open meeting. Notice of consideration of proposed plate designs will be posted in accordance with Office of the Secretary of State meeting notice requirements. Notice of each license plate design will be posted on the department's Internet website to receive public comment at least 25 days in advance of the meeting at which it will be considered. The department will notify all other specialty plate organizations and the sponsoring agencies who administer specialty license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the posting. A comment on the proposed design can be submitted in writing through the mechanism provided on the department's Internet website for submission of comments. Written comments are welcome and must be received by the department at least 10 days in advance of the meeting. Public comment will be received at the board's [~~Board's~~] meeting.

(7) Final approval.

(A) Approval. The board [~~Board~~] will approve or disapprove the specialty license plate application based on all of the information provided pursuant to this subchapter at an open meeting.

(B) Application not approved. If the application is not approved under subparagraph (A) of this paragraph, the applicant may submit a new application and supporting documentation for the design to be considered again by the board [~~Board~~] if:

(i) the applicant has additional, required documentation; or

(ii) the design has been altered to an acceptable degree.

(8) Issuance of specialty plates.

(A) If the specialty license plate is approved, the applicant must comply with Transportation Code, §504.702, before any further processing of the license plate.

(B) Approval of the plate does not guarantee that the submitted draft plate design will be used. The board [~~Board~~] has final approval authority of all specialty license plate designs and may adjust or reconfigure the submitted draft design to comply with the format or license plate specifications.

(C) If the board, [~~Board,~~] in consultation with the applicant, adjusts or reconfigures the design, the adjusted or reconfigured design will not be posted on the department's website for additional comments.

(9) Redesign of specialty license plate.

(A) Upon receipt of a written request from the applicant, the department will allow redesign of a specialty license plate.

(B) A request for a redesign must meet all application requirements and proceed through the approval process of a new specialty plate as required by this subsection.

(C) An approved license plate redesign does not require the deposit required by Transportation Code, §504.702, but the applicant must pay a redesign cost to cover administrative expenses.

(j) Golf carts.

(1) A county tax assessor-collector may issue golf cart license plates as long as the requirements under Transportation Code, §551.403 or §551.404, are met.

(2) A county tax assessor-collector may only issue golf cart license plates to residents or property owners of the issuing county.

(3) A golf cart license plate may not be used as a registration insignia, and a golf cart may not be registered for operation on a public highway.

(4) The license plate fee for a golf cart license plate is $10.

§217.47. Vehicle Emissions Enforcement System.

(a) Purpose. Transportation Code, §502.047, requires the department to implement a system requiring verification that a vehicle complies with vehicle emissions inspection and maintenance programs as required by the Health and Safety Code, §382.202 and §382.203, and Transportation Code, Chapter 548, Subchapter F. Transportation Code, §501.0276 and §502.047, requires a vehicle subject to Transportation

Code, §548.3011, to pass an emissions test on resale in an affected or early action compact county before it is titled or registered. This section prescribes the department's policies and procedures if a vehicle does not comply with the emissions standards set by federal and state laws and the provisions of the Texas air quality State Implementation Plan.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Affected County--A county with a motor vehicle emissions inspection and maintenance program established under Transportation Code, §548.301.

(2) Department--The Texas Department of Motor Vehicles.

(3) DPS--The Texas Department of Public Safety.

(4) Early action compact county--A participating county under Health and Safety Code, Chapter 382, Subchapter H.

(5) TCEQ--The Texas Commission on Environmental Quality.

(6) Vehicle--A self-propelled vehicle required to be registered in the state, except those vehicles exempted by TCEQ.

(7) Vehicle inspection report--A vehicle inspection form prescribed by DPS that is printed by the vehicle exhaust gas analyzer immediately following an emissions test.

(8) Vehicle emissions I/M program--A vehicle emissions inspection and maintenance program meeting all the requirements of the Environmental Protection Agency.

(9) Waiver--A form and certificate that allows a vehicle to be considered in compliance with the vehicle emissions I/M program for a specified period of time after a vehicle fails an emissions test.

(c) Notice from DPS or TCEQ.

(1) DPS, after notice to the vehicle owner, will notify the department if a motor vehicle owner fails to comply with the requirements of Transportation Code, Chapter 548, Subchapter F.

(2) TCEQ, after notice to the vehicle owner, will notify the department if a motor vehicle fails to comply with the requirements of Health and Safety Code, §382.202 and §382.203, [~~§382.037 and §382.0372,~~] and Transportation Code, Chapter 548, Subchapter F.

(3) The notice will include the vehicle identification number and the license plate number of the affected vehicle.

(4) If the department receives a notice of emissions noncompliance from DPS or TCEQ, the department will place a notation on the motor vehicle record that the motor vehicle has failed to comply with the vehicle emissions I/M program.

(5) If the department receives a notice of emissions compliance from DPS or TCEQ, the department will remove the non-compliance notation from the motor vehicle record.

(6) If a vehicle record contains a notation of failure to comply with the vehicle emissions I/M program, the tax assessor-collector will deny registration unless provided with:

(A) proof of compliance with the vehicle emissions I/M program with a "passing" vehicle inspection report; or

(B) proof of a waiver issued by DPS that includes the vehicle identification number and the license plate number.

(7) DPS and TCEQ will provide the department with the notifications in a format approved by the department.

(8) DPS and TCEQ will enter into an agreement with the department regarding the remittance to the department for costs associated with implementation of the emissions program.

(d) Vehicles moved into affected or early action compact counties. If a vehicle was last titled in an unaffected county and is to be titled or registered in an affected or early action compact county, it is not eligible for a title receipt, a title, or registration after a retail sale unless proof is presented to the county tax assessor-collector that the vehicle has passed the emissions test. This subsection does not apply to a vehicle that will be used in the affected or early action compact county for fewer than 60 days during the registration period for which registration is sought or to a vehicle that is a 1996 or newer model and has less than 50,000 miles.

§217.52. Marketing of Specialty License Plates through a Private Vendor.

(a) Purpose and scope. The department will enter into a contract with a private vendor to market department-approved specialty license plates in accordance with Transportation Code, Chapter 504, Subchapter J. This section sets out the procedure for approval of the design, purchase, and replacement of vendor specialty license plates. In this section, the license plates marketed by the vendor are referred to as vendor specialty license plates.

(b) Application for approval of vendor specialty license plate designs.

(1) Approval required. The vendor shall obtain the approval of the board [~~Board~~] for each license plate design the vendor proposes to market in accordance with this section and the contract entered into between the vendor and the department.

(2) Application. The vendor must submit a written application on a form approved by the executive director to the department for approval of each license plate design the vendor proposes to market. The application must include:

(A) a draft design of the specialty license plate;

(B) projected sales of the plate, including an explanation of how the projected figure was determined;

(C) a marketing plan for the plate including a description of the target market;

(D) a licensing agreement from the appropriate third party for any design or design element that is intellectual property; and

(E) other information necessary for the board [~~Board~~] to reach a decision regarding approval of the requested vendor specialty plate.

(c) Review and approval process. The board [~~Board~~] will review vendor specialty license plate applications. The board: [~~Board:~~]

(1) will not consider incomplete applications; and

(2) may request additional information from the vendor to reach a decision.

(d) Board decision.

(1) Decision. The decision of the board [~~Board~~] will be based on:

(A) compliance with Transportation Code, Chapter 504, Subchapter J;

(B) the proposed license plate design, including:

(i) whether the design meets the legibility and reflectivity standards established by the department;

(ii) whether the design meets the standards established by the department for uniqueness to ensure that the proposed plate complies with Transportation Code, §504.852(c);

(iii) whether the license plate design can accommodate the International Symbol of Access (ISA) as required by Transportation Code, §504.201(f);

(iv) the criteria designated in §217.27 of this title (relating to Vehicle Registration Insignia) as applied to the design;

(v) whether a design is similar enough to an existing plate design that it may compete with the existing plate sales; and

(vi) other information provided during the application process.

(2) Public comment on proposed design. All proposed plate designs will be considered by the board [~~Board~~] as an agenda item at a regularly or specially called open meeting. Notice of consideration of proposed plate designs will be posted in accordance with Office of the Secretary of State meeting notice requirements. Notice of each license plate design will be posted on the department's Internet web site to receive public comment at least 25 days in advance of the meeting at which it will be considered. The department will notify all specialty plate organizations and the sponsoring agencies who administer specialty license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the posting. A comment on the proposed design can be submitted in writing through the mechanism provided on the department's Internet web site for submission of comments. Written comments are welcome and must be received by the department at least 10 days in advance of the meeting. Public comment will be received at the board's [~~Board's~~] meeting.

(e) Final approval and specialty license plate issuance.

(1) Approval. The board [~~Board~~] will approve or disapprove the specialty license plate application based on all of the information provided pursuant to this subchapter in an open meeting.

(2) Application not approved. If the application is not approved, the applicant may submit a new application and supporting documentation for the design to be considered again by the board [~~Board~~] if:

(A) the applicant has additional, required documentation; or

(B) the design has been altered to an acceptable degree.

(3) Issuance of approved specialty plates.

(A) If the vendor's specialty license plate is approved, the vendor must submit the non-refundable start-up fee before any further design and processing of the license plate.

(B) Approval of the plate does not guarantee that the submitted draft plate design will be used. The board [~~Board~~] has final approval of all specialty license plate designs and will provide guidance on the submitted draft design to ensure compliance with the format and license plate specifications.

(f) Redesign of vendor specialty license plates.

(1) On receipt of a written request from the vendor, the department will allow a redesign of a vendor specialty license plate.

(2) The vendor must pay the redesign administrative costs as provided in the contract between the vendor and the department.

(g) Multi-year vendor specialty license plates. Purchasers will have the option of purchasing vendor specialty license plates for a one-year, a three-year, or a five-year period.

(h) License plate categories and associated fees. The categories and the associated fees for vendor specialty plates are set out in this subsection.

(1) Custom license plates. Custom license plates include license plates with a variety of pre-approved background and character color combinations that may be personalized with either three alpha and two or three numeric characters or two or three numeric and three alpha characters. Generic license plates on standard white sheeting with the word "Texas" that may be personalized with up to six alphanumeric characters are considered custom license plates before December 2, 2010. The fees for issuance of Custom and Generic license plates are $150 for one year, $400 for three years, and $450 for five years.

(2) T-Plates (Premium) license plates. T-Plates (Premium) license plates may be personalized with up to seven alphanumeric characters, including the "T," on colored backgrounds or designs approved by the department. The fees for issuance of T-Plates (Premium) license plates are $150 for one year, $400 for three years, and $450 for five years.

(3) Luxury license plates. Luxury license plates may be personalized with up to six alphanumeric characters on colored backgrounds or designs approved by the department. The fees for issuance of luxury license plates are $150 for one year, $400 for three years, and $450 for five years.

(4) Freedom license plates. Freedom license plates include license plates with a variety of pre-approved background and character color combinations that may be personalized with up to seven alphanumeric characters. The fees for issuance of freedom license plates are $195 for one year, $445 for three years, and $495 for five years.

(5) Background only license plates. Background only license plates include non-personalized license plates with a variety of pre-approved background and character color combinations. The fees for issuance of background only license plates are $50 for one year, $130 for three years, and $175 for five years.

(6) Vendor souvenir license plates. Vendor souvenir license plates are replicas of vendor specialty license plate designs that may be personalized with up to 24 [~~twenty-four~~] alphanumeric characters. Vendor souvenir license plates are not street legal or legitimate insignias of vehicle registration. The fee for issuance of souvenir license plates is $40.

(7) Auction of alphanumeric patterns. The vendor may auction alphanumeric patterns for one, three, or five year terms with options to renew indefinitely at the current price established for a one, three, or five year luxury category license plate. The purchaser of the auction pattern may select from the vendor background designs at no additional charge at the time of initial issuance. The auction pattern may be moved from one vendor design plate to another vendor design plate as provided in subsection (n)(1) of this section. The auction pattern may be transferred from owner to owner as provided in subsection (l)(2) of this section.

(8) Personalization and specialty plate fees.

(A) The fee for the personalization of license plates applied for prior to November 19, 2009 is $40 if the plates are renewed annually.

(B) The personalization fee for plates applied for after November 19, 2009 is $40 if the plates are issued pursuant to Transportation Code, Chapter 504, Subchapters G and I.

(C) If the plates are renewed annually, the personalization and specialty plate fees remain the same fee as at the time of issuance if a sponsor of a specialty license plate authorized under Transportation Code, Chapter 504, Subchapters G and I, signs a contract with the vendor in accordance with Transportation Code, Chapter 504, Subchapter J.

(i) Payment of fees.

(1) Payment of specialty license plate fees. The fees for issuance of vendor specialty license plates will be paid directly to the state through vendor and state systems for the license plate category and period selected by the purchaser. A person who purchases a multi-year vendor specialty license plate must pay upon purchase the full fee which includes the renewal fees.

(2) Payment of statutory registration fees. To be valid for use on a motor vehicle, the license plate owner is required to pay, in addition to the vendor specialty license plate fees, any statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502, and this subchapter.

(j) Refunds. Fees for vendor specialty license plate fees will not be refunded after an application is submitted to the vendor and the department has approved issuance of the license plate.

(k) Replacement.

(1) Application. An owner must apply directly to the county tax assessor-collector for the issuance of replacement vendor specialty license plates and must pay the fee described in paragraphs (2) or (3) of this subsection, whichever applies.

(2) Lost or mutilated vendor specialty license plates. To replace vendor specialty license plates that are lost or mutilated, the owner must pay the statutory replacement fee provided in Transportation Code, §504.007.

(3) Optional replacements. An owner of a vendor specialty license plate may replace vendor specialty license plates by submitting a request to the county tax assessor-collector accompanied by the payment of a $6 fee.

(4) Interim replacement tags. If the vendor specialty license plates are lost or mutilated to such an extent that they are unusable, replacement license plates will need to be remanufactured. The county tax assessor-collector will issue interim replacement tags for use until the replacements are available. The owner's vendor specialty license plate number will be shown on the interim replacement tags.

(5) Stolen vendor specialty license plates. The county tax assessor-collector will not approve the issuance of replacement vendor specialty license plates with the same license plate number if the department's records indicate that the vehicle displaying that license plate number was reported stolen or the license plates themselves were reported stolen.

(l) Transfer of vendor specialty license plates.

(1) Transfer between vehicles. The owner of a vehicle with vendor specialty license plates may transfer the license plates between vehicles by filing an application through the county tax assessor-collector if the vehicle to which the plates are transferred:

(A) is titled or leased in the owner's name; and

(B) meets the vehicle classification requirements for that particular specialty license plate.

(2) Transfer between owners. Vendor specialty license plates may not be transferred between persons unless the license plate pattern was initially purchased through auction as provided in subsection (h)(7) of this section. An auctioned alphanumeric pattern may be transferred as a specialty license plate or as a virtual pattern to be manufactured on a new background as provided under the restyle option in subsection (n)(1) of this section. In addition to the fee paid at auction, the new owner of an auctioned alphanumeric pattern or plate will pay the department a fee of $25 to cover the cost of the transfer, and complete the department's prescribed application at the time of transfer.

(m) Gift plates.

(1) A person may purchase plates as a gift for another person if the purchaser submits a statement that provides:

(A) the purchaser's name and address;

(B) the name and address of the person who will receive the plates; and

(C) the vehicle identification number of the vehicle on which the plates will be displayed or a statement that the plates will not be displayed on a vehicle.

(2) To be valid for use on a motor vehicle, the recipient of the plates must file an application with the county tax assessor-collector and pay the statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502, and this subchapter.

(n) Restyled vendor specialty license plates. A person who has purchased a multi-year vendor specialty license plate may request a restyled license plate at any time during the term of the plate.

(1) For the purposes of this subsection, "restyled license plate" is a vendor specialty license plate that has a different style from the originally purchased vendor specialty license plate but:

(A) is within the same price category, except if the pattern is an auction pattern; and

(B) has the same alpha-numeric characters and expiration date as the previously issued multi-year license plates.

(2) The fee for each restyled license plate is $50.

§217.54. Registration of Fleet Vehicles.

(a) Scope. A registrant may consolidate the registration of multiple motor vehicles, including trailers and semitrailers, [~~semi-trailers,~~] in a fleet instead of registering each vehicle separately. This section prescribes the policies and procedures for fleet registration.

(b) Eligibility. A fleet must meet the following requirements to be eligible for fleet registration.

(1) No fewer than 25 [~~twenty-five~~] vehicles will be registered as a fleet;

(2) Vehicles may be registered in annual increments for up to eight years;

(3) All vehicles in a fleet must be owned by or leased to the same business entity;

(4) All vehicles must be vehicles that are not registered under the International Registration Plan; and

(5) Each vehicle must currently be titled in Texas or be issued a registration receipt, or the registrant must submit an application for a title or registration for each vehicle.

(c) Application.

(1) Application for fleet registration must be in a form prescribed by the department. At a minimum the form will require:

(A) the full name and complete address of the registrant;

(B) a description of each vehicle in the fleet, which may include the vehicle's model year, make, model, vehicle identification number, document number, body style, gross weight, empty weight, and for a commercial vehicle, manufacturer's rated carrying capacity in tons;

(C) the existing license plate number, if any, assigned to each vehicle; and

(D) any other information that the department may require.

(2) The application must be accompanied by the following items:

(A) in the case of a leased vehicle, a certification that the vehicle is currently leased to the person to whom the fleet registration will be issued;

(B) registration fees prescribed by law for the entire registration period selected by the registrant;

(C) local fees or other fees prescribed by law and collected in conjunction with registering a vehicle for the entire registration period selected by the registrant;

(D) evidence of financial responsibility for each vehicle as required by Transportation Code, §502.046, unless otherwise exempted by law;

(E) annual proof of payment of Heavy Vehicle Use Tax;

(F) the state's portion of the vehicle inspection fee for the vehicle inspections conducted in Texas; and

(G) any other documents or fees required by law.

(d) Registration period.

(1) The fleet owner will designate a single registration period for a fleet so the registration period for each vehicle will expire on the same date.

(2) The fleet registration period will begin on the first day of a calendar month and end on the last day of a calendar month.

(e) Insignia.

(1) As evidence of registration, the department will issue distinguishing insignia for each vehicle in a fleet.

(2) The insignia shall be included on the license plate and affixed to the vehicle.

(3) The insignia shall be attached to the rear license plate if the vehicle has no windshield.

(4) The registration receipt for each vehicle shall at all times be carried in that vehicle and be available to law enforcement personnel.

(5) Insignia may not be transferred between vehicles, owners, or registrants.

(f) Fleet composition.

(1) A registrant may add a vehicle to a fleet at any time during the registration period. An added vehicle will be given the same registration period as the fleet and will be issued fleet registration insignia.

(2) A registrant may remove a vehicle from a fleet at any time during the registration period. The fleet registrant shall return the fleet registration insignia for that vehicle to the department at the time the vehicle is removed from the fleet. Credit for any vehicle removed from the fleet for the remaining full year increments can be applied to any vehicle added to the fleet or at the time of renewal. No refunds will be given if credit is not used or the account is closed.

(3) If the number of vehicles in an account falls below 25 [~~twenty-five~~] during the registration period, fleet registration will remain in effect. If the number of vehicles in an account is below 25 [~~twenty-five~~] at the end of the registration period, fleet registration will be canceled. In the event of cancellation, each vehicle shall be registered separately. The registrant shall immediately return all fleet registration insignia to the department.

(g) Fees.

(1) When a fleet is first established, the department will charge a registration fee for each vehicle for the entire registration period selected. A currently registered vehicle, however, will be given credit for any remaining time on its separate registration.

(2) When a vehicle is added to an existing fleet, the department will charge a registration fee that is prorated based on the number of months of fleet registration remaining. If the vehicle is currently registered, this fee will be adjusted to provide credit for the number of months of separate registration remaining.

(3) When a vehicle is removed from fleet registration, it will be considered to be registered separately. The vehicle's separate registration will expire on the date that the fleet registration would have expired. The registrant must pay the statutory replacement fee to obtain regular registration insignia before the vehicle may be operated on a public highway.

(h) Payment. Payment will be made in the manner prescribed by the department.

(i) Cancellation.

(1) The department will cancel registration for non-payment and lack of proof of annual payment of the Heavy Vehicle Use Tax.

(2) The department may cancel registration on any fleet vehicle that is not in compliance with the inspection requirements under Transportation Code, Chapter 548, and the Texas Department of Public Safety rules regarding inspection requirements on the anniversary date(s) of the registration.

(3) A vehicle with a cancelled registration may not be operated on a public highway.

(4) If the department cancels the registration of a vehicle under this subsection, the registrant can request the department to reinstate the registration by doing the following:

(A) complying with the requirements for which the department cancelled the registration;

(B) providing the department with notice of compliance on a form prescribed by the department; and

(C) for a registration cancelled under paragraph (2) of this subsection, paying an administrative fee in the amount of $10.

(5) A registrant is only eligible for reinstatement of the registration within 90 calendar days of the department's notice of cancellation.

(6) If a registrant fails to timely reinstate the registration of a cancelled vehicle registration under this section, the registrant:

(A) is not entitled to a credit or refund of any registration fees for the vehicle; and

(B) must immediately return the registration insignia to the department.

(j) Inspection fee. The registrant must pay the department by the deadline listed in the invoice for the state's portion of the vehicle inspection fee for a vehicle inspection conducted in Texas.

§217.56. Registration Reciprocity Agreements.

(a) Purpose. To promote and encourage the fullest possible use of the highway system and contribute to the economic development and growth of the State of Texas and its residents, the department is authorized by Transportation Code, §502.091, to enter into agreements with duly authorized officials of other jurisdictions, including any state of the United States, the District of Columbia, a foreign country, a state or province of a foreign country, or a territory or possession of either the United States or of a foreign country, and to provide for the registration of vehicles by Texas residents and nonresidents on an allocation or distance apportionment basis, and to grant exemptions from the payment of registration fees by nonresidents if the grants are reciprocal to Texas residents.

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

(1) Cab card--The apportioned vehicle registration receipt that contains, but is not limited to, the vehicle description and the registered weight at which the vehicle may operate in each jurisdiction.

(2) Department--The Texas Department of Motor Vehicles.

(3) Director--The director of the Motor Carrier Division, Texas Department of Motor Vehicles.

(4) Executive director--The chief executive officer of the department.

(5) Regional Service Center--A department office which provides specific services to the public, including replacement titles, bonded title rejection letters, and apportioned registration under the International Registration Plan (IRP).

(6) Temporary cab card--A temporary registration permit authorized by the department that allows the operation of a vehicle for 30 days subject to all rights and privileges afforded to a vehicle displaying apportioned registration.

(c) Multilateral agreements.

(1) Authority. The executive director may on behalf of the department enter into a multilateral agreement with the duly authorized officials of two or more other jurisdictions to carry out the purpose of this section.

(2) International Registration Plan.

(A) Applicability. The IRP is a registration reciprocity agreement among states of the United States and other jurisdictions providing for payment of registration fees on the basis of fleet distance operated in various jurisdictions. Its purpose is to promote and encourage the fullest possible use of the highway system by authorizing apportioned registration for commercial motor vehicles and payment of appropriate vehicle registration fees and thus contributing to the economic development and growth of the member jurisdictions.

(B) Adoption. The department adopts by reference the January 1, 2015, edition of the IRP. Effective January 1, 2016, the department adopts by reference the amendments to the IRP with an effective date of January 1, 2016. Effective July 1, 2016, the department adopts by reference the amendment to the IRP with an effective date of July 1, 2016. The department further adopts by reference the July 1, 2013, edition of the IRP Audit Procedures Manual. In the event of a conflict between this section and the IRP or the IRP Audit Procedures Manual, the IRP and the IRP Audit Procedures Manual control. Copies of the documents are available for review in the Motor Carrier Division, Texas Department of Motor Vehicles. Copies are also available on request. The following words and terms, when used in the IRP or in paragraph (2) of this subsection, shall have the following meanings, unless the context clearly indicates otherwise.

(i) Apportionable vehicle--Any vehicle - except recreational vehicles, vehicles displaying restricted plates, city pickup and delivery vehicles, and government-owned vehicles - used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and used either for the transportation of persons for hire or designed, used, or maintained primarily for the transportation of property and:

(I) is a power unit having two axles and a gross vehicle weight or registered gross vehicle weight in excess of 26,000 pounds (11,793.401 kilograms);

(II) is a power unit having three or more axles, regardless of weight;

(III) is used in combination, when the weight of such combination exceeds 26,000 pounds (11,793.401 kilograms) gross vehicle weight; or

(IV) at the option of the registrant, a power unit, or the power unit in a combination of vehicles having a gross vehicle weight of 26,000 pounds (11,793.401 kilograms) or less.

(ii) Commercial vehicle--A vehicle or combination of vehicles designed and used for the transportation of persons or property in furtherance of any commercial enterprise, for hire or not for hire.

(iii) Erroneous issuance--Apportioned registration issued based on erroneous information provided to the department.

(iv) Established place of business--A physical structure owned or leased within the state of Texas by the applicant or fleet registrant and maintained in accordance with the provisions of the IRP.

(v) Fleet distance--All distance operated by an apportionable vehicle or vehicles used to calculate registration fees for the various jurisdictions.

(C) Application.

(i) An applicant must submit an application to the department on a form prescribed by the director, along with additional documentation as required by the director.

(ii) Upon approval of the application, the department will compute the appropriate registration fees and notify the registrant.

(D) Fees. Upon receipt of the applicable fees in the form as provided by §209.23 of this title (relating to Methods of Payment), the department will issue one or two license plates and a cab card for each vehicle registered.

(E) Display.

(i) The department will issue one license plate for a tractor, truck tractor, trailer, and semitrailer. [~~semi-trailer.~~] The license plate issued to a tractor or a truck tractor shall be installed on the front of the tractor or truck tractor, and the license plate issued for a trailer or semitrailer [~~semi-trailer~~] shall be installed on the rear of the trailer or semitrailer. [~~semi-trailer.~~]

(ii) The department will issue two license plates for all other vehicles that are eligible to receive license plates under the IRP. Once the department issues two license plates for a vehicle listed in this clause, one plate shall be installed on the front of the vehicle, and one plate shall be installed on the rear of the vehicle.

(iii) The cab card shall be carried at all times in the vehicle in accordance with the IRP.

(F) Audit. An audit of the registrant's vehicle operational records may be conducted by the department according to the IRP provisions and the IRP Audit Procedures Manual. Upon request, the registrant shall provide the operational records of each vehicle for audit in unit number order, in sequence by date, and including, but not limited to, a summary of distance traveled by each individual vehicle on a monthly, quarterly, and annual basis with distance totaled separately for each jurisdiction in which the vehicle traveled.

(G) Assessment. The department may assess additional registration fees of up to 100% of the apportionable fees paid by the registrant for the registration of its fleet in the registration year to which the records pertain, as authorized by the IRP, if an audit conducted under subparagraph (F) of this paragraph reveals that:

(i) the operational records indicate that the vehicle did not generate interstate distance in two or more member jurisdictions for the distance reporting period supporting the application being audited, plus the six-month period immediately following that distance reporting period;

(ii) the registrant failed to provide complete operational records; or

(iii) the distance must be adjusted, and the adjustment results in a shortage of registration fees due Texas or any other IRP jurisdiction.

(H) Refunds. If an audit conducted under §217.56(c)(2)(F)of this paragraph reveals an overpayment of fees to Texas or any other IRP jurisdiction, the department will refund the overpayment of registration fees in accordance with Transportation Code, §502.195, and the IRP. Any registration fees refunded to a carrier for another jurisdiction will be deducted from registration fees collected and transmitted to that jurisdiction.

(I) Cancellation. The director or the director's designee may cancel a registrant's apportioned registration and all privileges provided by the IRP if the registrant:

(i) submits payment in the form of a check that is dishonored;

(ii) files or provides erroneous information to the department; or

(iii) fails to:

(I) remit appropriate fees due each jurisdiction in which the registrant is authorized to operate;

(II) meet the requirements of the IRP concerning established place of business;

(III) provide operational records in accordance with §217.56(c)(2)(F) of this paragraph;

(IV) provide an acceptable source document as specified in the IRP; or

(V) pay an assessment pursuant to subparagraph (G) of this paragraph.

(J) Enforcement of cancelled registration.

(i) Notice. If a registrant is assessed additional registration fees, as provided in §217.56(c)(2)(G) of this paragraph, and the additional fees are not paid by the due date provided in the notice or it is determined that a registrant's apportioned license plates and privileges should be canceled, as provided in subparagraph (I) of this paragraph, the director or the director's designee will mail a notice by certified mail to the last known address of the registrant. The notice will state the facts underlying the assessment or cancellation, the effective date of the assessment or cancellation, and the right of the registrant to request a conference as provided in clause (ii) of this subparagraph.

(ii) Conference. A registrant may request a conference upon receipt of a notice issued as provided by clause (i) of this subparagraph. The request must be made in writing to the director or the director's designee within 30 days of the date of the notice. If timely requested, the conference will be scheduled and conducted by the director or the director's designee at division headquarters in Austin and will serve to abate the assessment or cancellation unless and until that assessment or cancellation is affirmed or disaffirmed by the director or the director's designee. In the event matters are resolved in the registrant's favor, the director or the director's designee will mail the registrant a notice of withdrawal, notifying the registrant that the assessment or cancellation is withdrawn, and stating the basis for that action. In the event matters are not resolved in the registrant's favor, the director or the director's designee will issue a ruling reaffirming the department's assessment of additional registration fees or cancellation of apportioned license plates and privileges. The registrant has the right to appeal in accordance with clause (iii) of this subparagraph.

(iii) Appeal. If a conference held in accordance with clause (ii) of this subparagraph fails to resolve matters in the registrant's favor, the registrant may request an administrative hearing. The request must be in writing and must be received by the director no later than the 20th day following the date of the ruling issued under §217.56(c)(2)(J)(ii) of this subparagraph. If requested within the designated period, the hearing will be initiated by the department and will be conducted in accordance with Chapter 206, Subchapter D of this title (relating to Procedures in Contested Cases). Assessment or cancellation is abated unless and until affirmed or disaffirmed by order of the Board of the Texas Department of Motor Vehicles.

(K) Reinstatement.

(i) The director or the director's designee will reinstate apportioned registration to a previously canceled registrant if all applicable fees and assessments due on the previously canceled apportioned account have been paid and the applicant provides proof of an acceptable recordkeeping system for a period of no less than 60 days.

(ii) The application for the following registration year will be processed in accordance with the provisions of the IRP.

(L) Denial of apportioned registration for safety reasons. The department will comply with the requirements of the Performance and Registration Information Systems Management program (PRISM) administered by the Federal Motor Carrier Safety Administration (FMCSA).

(i) Denial or suspension of apportioned registration. Upon notification from the FMCSA that a carrier has been placed out of service for safety violations, the department will:

(I) deny initial issuance of apportioned registration;

(II) deny authorization for a temporary cab card, as provided for in subparagraph (M) of this paragraph;

(III) deny renewal of apportioned registration; or

(IV) suspend current apportioned registration.

(ii) Issuance after denial of registration or reinstatement of suspended registration. The director or the director's designee will reinstate or accept an initial or renewal application for apportioned registration from a registrant who was suspended or denied registration under clause (i) of this subparagraph upon presentation of a Certificate of Compliance from FMCSA, in addition to all other required documentation and payment of fees.

(M) Temporary cab card.

(i) Application. The department may authorize issuance of a temporary cab card to a motor carrier with an established Texas apportioned account for a vehicle upon proper submission of all required documentation, a completed application, and all fees for either:

(I) Texas title as prescribed by Transportation Code, Chapter 501, and Subchapter A of this chapter (relating to Motor Vehicle Titles); or

(II) registration receipt to evidence title for registration purposes only (Registration Purposes Only) as provided for in Transportation Code, §501.029, and §217.24 of this title (relating to Vehicle Last Registered in Another Jurisdiction).

(ii) Title application. A registrant who is applying for a Texas title as provided for in clause (i)(I) of this subparagraph and is requesting authorization for a temporary cab card, must submit to a Regional Service Center by email, fax, overnight mail, or in person a photocopy of the title application receipt issued by the county tax assessor-collector's office.

(iii) Registration Purposes Only. A registrant who is applying for Registration Purposes Only under clause (i)(II) of this subparagraph and is requesting authorization for a temporary cab card, must submit an application and all additional original documents or copies of original documents required by the director to a Regional Service Center by email, fax, or overnight mail or in person.

(iv) Department approval. On department approval of the submitted documents, the department will send notice to the registrant to finalize the transaction and make payment of applicable registration fees.

(v) Finalization and payment of fees. To finalize the transaction and print the temporary cab card, the registrant may compute the registration fees through the department's apportioned registration software application, TxIRP system, and:

(I) make payment of the applicable registration fees to the department as provided by §209.23 of this title (related to Methods of Payment); and

(II) afterwards, mail or deliver payment of the title application fee in the form of a check, certified cashier's check, or money order payable to the county tax assessor-collector in the registrant's county of residency and originals of all copied documents previously submitted.

(vi) Deadline. The original documents and payment must be received by the Regional Service Center within 72-hours after the time that the office notified the registrant of the approval to print a temporary cab card as provided in clause (iv) of this subparagraph.

(vii) Failure to meet deadline. If the registrant fails to submit the original documents and required payment within the time prescribed by clause (vi) of this subparagraph, the registrant's privilege to use this expedited process to obtain a temporary cab card will be denied by the department for a period of six months from the date of approval to print the temporary cab card.

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

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SUBCHAPTER D. NON-REPAIRABLE AND SALVAGE MOTOR VEHICLES

43 TAC §§217.82, 217.84, 217.86

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department; and more specifically, Transportation Code, §501.0041, which provides the department may adopt rules to administer Transportation Code, Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Transportation Code, Chapter 502, Registration of Vehicles; and Transportation Code, §520.0071, which provides the board by rule shall prescribe the classification types of deputies performing titling and registration duties, the duties and obligations of deputies, the type and amount of any bonds that may be required by a county tax assessor-collector for a deputy to perform titling and registration duties, and the fees that may be charged or retained by deputies.

CROSS REFERENCE TO STATUTE

Health and Safety Code, §382.202 and §382.203; and Transportation Code, §§501.002, 501.091, 501.1001, and 501.1002.

§217.82. Definitions.

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

(1) Casual sale--The sale by a salvage vehicle dealer, insurance company, or salvage pool operator of not more than five non-repairable or salvage motor vehicles to the same person during a calendar year. The term does not include a sale to a salvage vehicle dealer or the sale of an export-only motor vehicle to a person who is not a resident of the United States.

(2) Certificate of title--A written instrument that may be issued solely by and under the authority of the department and that reflects the transferor, transferee, vehicle description, license plate and lien information, and rights of survivorship agreement as specified in Subchapter A of this chapter or as required by the department.

(3) Application for Title--A form prescribed by the director of the department's Vehicle Titles and Registration Division that

reflects the information required by the department to create a motor vehicle title record.

(4) Damage--Sudden damage to a motor vehicle caused by the motor vehicle being wrecked, burned, flooded, or stripped of major component parts. The term does not include gradual damage from any cause, sudden damage caused by hail, or any damage caused only to the exterior paint of the motor vehicle.

(5) Date of sale--The date of the transfer of possession of a specific vehicle from a seller to a purchaser.

(6) Department--The Texas Department of Motor Vehicles.

(7) Export-only sale--The sale of a non-repairable or salvage motor vehicle, by a salvage vehicle dealer, including a salvage pool operator acting as agent for an insurance company, or a governmental entity, to a person who resides outside the United States.

(8) Flood damage--A title remark that is initially indicated on a non-repairable or salvage vehicle title to denote that the damage to the vehicle was caused exclusively by flood and that is carried forward on subsequent title issuance.

(9) Insurance company--A person authorized to write automobile insurance in this state or an out-of-state insurance company that pays a loss claim for a motor vehicle in this state.

(10) Manufacturer's certificate of origin--A form prescribed by the department showing the original transfer of a new motor vehicle from the manufacturer to the original purchaser, whether importer, distributor, dealer, or owner, and when presented with an application for title, showing, on appropriate forms prescribed by the department, each subsequent transfer between distributor and dealer, dealer and dealer, and dealer and owner.

(11) Metal recycler--A person who:

(A) is predominately engaged in the business of obtaining ferrous or nonferrous metal that has served its original economic purpose to convert the metal, or sell the metal for conversion, into raw material products consisting of prepared grades and having an existing or potential economic value;

(B) has a facility to convert ferrous or nonferrous metal into raw material products consisting of prepared grades and having an existing or potential economic value, by a method other than the exclusive use of hand tools, including the processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content of the metal; and

(C) sells or purchases the ferrous or nonferrous metal solely for use as raw material in the production of new products.

(12) Motor vehicle--A vehicle described by Transportation Code, §501.002(17). [~~§501.002(14).~~]

(13) Non-repairable motor vehicle--A motor vehicle, regardless of the year model, that is wrecked, damaged, or burned to the extent that the only residual value of the motor vehicle is as a source of parts or scrap metal, or that comes into this state under a title or other ownership document that indicates that the motor vehicle is non-repairable, junked, or for parts or dismantling only.

(14) Non-repairable vehicle title--A document that evidences ownership of a non-repairable motor vehicle.

(15) Out-of-state buyer--A person licensed in an automotive business by another state or jurisdiction if the department has listed the holders of such a license as permitted purchasers of salvage motor vehicles or non-repairable motor vehicles based on substantially similar licensing requirements and on whether salvage vehicle dealers licensed in Texas are permitted to purchase salvage motor vehicles or non-repairable motor vehicles in the other state or jurisdiction.

(16) Out-of-state ownership document--A negotiable document issued by another jurisdiction that the department considers sufficient to prove ownership of a non-repairable or salvage motor vehicle and to support issuance of a comparable Texas certificate of title for the motor vehicle. The term does not include a title issued by the department, including a:

(A) regular certificate of title;

(B) non-repairable vehicle title;

(C) salvage vehicle title;

(D) salvage certificate;

(E) Certificate of Authority to Demolish a Motor Vehicle; or

(F) any other ownership document issued by the department.

(17) Person--An individual, partnership, corporation, trust, association, or other private legal entity.

(18) Rebuilt salvage certificate of title--A regular certificate of title evidencing ownership of a non-repairable motor vehicle that was issued a non-repairable vehicle title prior to September 1, 2003, or salvage motor vehicle that has been rebuilt.

(19) Salvage motor vehicle--A motor vehicle, regardless of the year model:

(A) that is:

(i) damaged or is missing a major component part to the extent that the cost of repairs exceeds the actual cash value of the motor vehicle immediately before the damage; or

(ii) damaged and comes into this state under an out-of-state ownership document that states on its face "accident damage," "flood damage," "inoperable," "rebuildable," "salvageable," or similar notation, and is not an out-of-state ownership document with a "rebuilt," "prior salvage," or similar notation, or a non-repairable motor vehicle; and

(B) does not include:

(i) a motor vehicle for which an insurance company has paid a claim for repairing hail damage, or theft, unless the motor vehicle was damaged during the theft and before recovery to the extent that the cost of repair exceeds the actual cash value of the motor vehicle immediately before the damage;

(ii) the cost of materials or labor for repainting the motor vehicle; or

(iii) sales tax on the total cost of repairs.

(20) Salvage vehicle dealer--A person engaged in this state in the business of acquiring, selling, dismantling, repairing, rebuilding, reconstructing, or otherwise dealing in non-repairable motor vehicles or salvage motor vehicles or used parts, including a person who is in the business of a salvage vehicle dealer, regardless of whether the person holds a license issued by the department to engage in the business. The term does not include a person who casually repairs, rebuilds, or reconstructs fewer than three salvage motor vehicles in the same calendar year.

(21) Salvage vehicle title--A document issued by the department that evidences ownership of a salvage motor vehicle.

§217.84. Application for Non-repairable or Salvage Vehicle Title.

(a) Place of application. The owner of a non-repairable or salvage motor vehicle who is required to obtain or voluntarily chooses to obtain a non-repairable or salvage vehicle title, as provided by §217.83 of this title (relating to Requirement for Non-repairable or Salvage Vehicle Title), shall apply for a non-repairable or salvage vehicle title by submitting an application, the required accompanying documentation, and the statutory fee to the department.

(b) Information on application. An applicant for a non-repairable or salvage vehicle title shall submit an application on a form prescribed by the department. A completed form, in addition to any other information required by the department, must include:

(1) the name and current address of the owner;

(2) a description of the motor vehicle, including the motor vehicle's model year, make, model, identification number, body style, manufacturer's rated carrying capacity in tons for commercial vehicles, and empty weight;

(3) a statement describing whether the motor vehicle is a non-repairable or salvage motor vehicle; and

(A) was the subject of a total loss claim paid by an insurance company under Transportation Code, §501.1001 or §501.1002; [~~§501.092 or §501.093;~~]

(B) is a self-insured motor vehicle under Transportation Code, §501.091; [~~§501.094;~~]

(C) is an export-only motor vehicle under Transportation Code, §501.099;

(D) was sold, transferred, or released to the owner or former owner of the motor vehicle; or

(E) was sold, transferred, or released to a buyer at casual sale by a salvage vehicle dealer, insurance company, or salvage pool operator;

(4) whether the damage was caused exclusively by flood;

(5) a description of the damage to the motor vehicle;

(6) the odometer reading and brand, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements, if the motor vehicle is a salvage motor vehicle;

(7) the name, address, and city and state of residence of the previous owner;

(8) the name and mailing address of any lienholder and the date of lien, as provided by subsection (e) of this section; and

(9) the signature of the applicant or the applicant's authorized agent and the date the certificate of title application was signed.

(c) Accompanying documentation. A non-repairable or salvage vehicle title application must be supported, at a minimum, by:

(1) evidence of ownership, as described by subsection (d)(1) or (3) of this section, if the applicant is an insurance company that is unable to locate one or more of the owners;

(2) an odometer disclosure statement properly executed by the seller of the motor vehicle and acknowledged by the purchaser, if the motor vehicle is less than 10 model years old and the motor vehicle is a salvage motor vehicle; and

(3) a release of any liens.

(d) Evidence of non-repairable or salvage motor vehicle ownership.

(1) Evidence of non-repairable or salvage motor vehicle ownership properly assigned to the applicant must accompany the application for a non-repairable or salvage vehicle title, except as provided by paragraph (2) of this subsection. Evidence must include documentation sufficient to show ownership to the non-repairable or salvage motor vehicle, such as:

(A) a Texas Certificate of Title;

(B) a certified copy of a Texas Certificate of Title;

(C) a manufacturer's certificate of origin;

(D) a Texas Salvage Certificate;

(E) a non-repairable vehicle title;

(F) a salvage vehicle title;

(G) a comparable ownership document issued by another jurisdiction, except that if the applicant is an insurance company, evidence must be provided indicating that the insurance company is:

(i) licensed to do business in Texas; or

(ii) not licensed to do business in Texas, but has paid a loss claim for the motor vehicle in this state; or

(H) a photocopy of the inventory receipt or a title and registration verification evidencing surrender to the department of the negotiable evidence of ownership for a motor vehicle as provided by §217.86 of this title (relating to Dismantling, Scrapping, or Destruction of Motor Vehicles), and if the evidence of ownership surrendered was from another jurisdiction, a photocopy of the front and back of the surrendered evidence of ownership.

(2) An insurance company that acquires ownership or possession of a non-repairable or salvage motor vehicle through payment of a claim may apply for a non-repairable or salvage vehicle title to be issued in the insurance company's name without obtaining an ownership document or if it received an ownership document without the proper assignment of the owner if the company is unable to obtain a title from the owner, in accordance with paragraph (1) of this subsection, and the application is not made earlier than the 30th day after the date of payment of the claim. The application must also include:

(A) a statement that the insurance company has provided at least two written notices to the owner and any lienholder attempting to obtain the title or proper assignment of title for the motor vehicle;

(B) a copy of a document:

(i) indicating that payment has been made, including an electronic check, canceled check, or screen print from the insurance company's database that identifies the type of payment method; and

(ii) reflecting the vehicle identification number, vehicle owner names, name of the person to whom payment was made if different from vehicle owners, payment amount, and date payment was issued; and

(C) any unassigned or improperly assigned title in the insurance company's possession.

(3) An insurance company that acquires, through payment of a claim, ownership or possession of a salvage motor vehicle or non-repairable motor vehicle covered by an out-of-state ownership document may obtain a salvage vehicle title or non-repairable vehicle title in accordance with paragraph (1) or (2) of this subsection if:

(A) the motor vehicle was damaged, stolen, or recovered in this state; or

(B) the motor vehicle owner from whom the company acquired ownership resides in this state.

(4) A salvage pool operator may apply for title in the name of the salvage pool operator by providing to the department:

(A) documentation from the insurance company that:

(i) the salvage pool operator, on request of an insurance company, was asked to take possession of the motor vehicle subject to an insurance claim and the insurance company subsequently denied coverage or did not take ownership of the vehicle; and

(ii) the name and address of the owner of the motor vehicle and the lienholder, if any; and

(B) proof that the salvage pool operator, before the 31st day after receiving the information from the insurance company, sent a notice to the owner and any lienholder informing them that:

(i) the motor vehicle must be removed from the location specified in the notice not later than the 30th day after the date the notice is mailed; and

(ii) if the motor vehicle is not removed within the time specified in the notice, the salvage pool operator will sell the motor vehicle and retain from the proceeds any costs actually incurred by the operator in obtaining, handling, and disposing of the motor vehicle, except for charges:

(I) that have been or are subject to being reimbursed by a third party; and

(II) for storage or impoundment of the motor vehicle.

(5) Proof of notice under this subsection consists of:

(A) the validated receipts for registered or certified mail and return receipt or an electronic certified mail receipt, including signature receipt; and

(B) any unopened certified letters returned by the post office as unclaimed, undeliverable, or with no forwarding address.

(e) Recordation of lien on non-repairable and salvage vehicle titles. If the motor vehicle is a salvage motor vehicle, a new lien or a currently recorded lien may be recorded on the salvage vehicle title. If the motor vehicle is a non-repairable motor vehicle, only a currently recorded lien may be recorded on the non-repairable vehicle title.

(f) Issuance. Upon receipt of a completed non-repairable or salvage vehicle title application, accompanied by the statutory application fee and the required documentation, the department will, before the sixth business day after the date of receipt, issue a non-repairable or salvage vehicle title, as appropriate.

(1) If the condition of salvage is caused exclusively by flood, a "Flood Damage" notation will be reflected on the face of the document and will be carried forward upon subsequent title issuance.

(2) If a lien is recorded on a non-repairable or salvage vehicle title, the vehicle title will be mailed to the lienholder. For proof of ownership purposes, the owner will be mailed a receipt or printout of the newly established motor vehicle record, indicating a lien has been recorded.

(3) A non-repairable vehicle title will state on its face that the motor vehicle may:

(A) not be repaired, rebuilt, or reconstructed;

(B) not be issued a regular certificate of title or registered in this state;

(C) not be operated on a public highway; and

(D) may only be used as a source for used parts or scrap metal.

§217.86. Dismantling, Scrapping, or Destruction of Motor Vehicles.

(a) A person who acquires ownership of a non-repairable or salvage motor vehicle for the purpose of dismantling, scrapping, or destruction shall, not later than the 30th day after the motor vehicle was acquired:

(1) submit to the department a report, on a form prescribed by the department:

(A) stating that the motor vehicle will be dismantled, scrapped, or destroyed; and

(B) certifying that all unexpired license plates and registration validation stickers have been removed from the motor vehicle, in accordance with Occupations Code, §2302.252; and

(2) surrender to the department the properly assigned ownership document.

(b) The person shall:

(1) maintain records of each motor vehicle that will be dismantled, scrapped, or destroyed, as provided by Chapter 221, Subchapter D [~~§217.191(d)~~] of this title (relating to Records) [~~Record of Purchases, Sales, and Inventory)~~]; and

(2) store all unexpired license plates and registration validation stickers removed from those vehicles in a secure location.

(c) The department will issue the person a receipt with surrender of the report and ownership documents.

(d) License plates and registration validation stickers removed from vehicles reported under subsection (a)(1) of this section may be destroyed upon receipt of the acknowledged report from the department.

(e) The department will place an appropriate notation on motor vehicle records for which ownership documents have been surrendered to the department.

(f) Not later than 60 days after the motor vehicle is dismantled, scrapped, or destroyed, the person shall report to the department and provide evidence that the motor vehicle has been dismantled, scrapped, or destroyed.

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. TITLE LIENS AND CLAIMS

43 TAC §217.103

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department; and more specifically, Transportation Code, §501.0041, which provides the department may adopt rules to administer Transportation Code, Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Transportation Code, Chapter 502, Registration of Vehicles; and Transportation Code, §520.0071, which provides the board by rule shall prescribe the classification types of deputies performing titling and registration duties, the duties and obligations of deputies, the type and amount of any bonds that may be required by a county tax assessor-collector for a deputy to perform titling and registration duties, and the fees that may be charged or retained by deputies.

CROSS REFERENCE TO STATUTE

Health and Safety Code, §382.202 and §382.203; and Transportation Code, §§501.002, 501.091, 501.1001, and 501.1002.

§217.103. Restitution Liens.

(a) Purpose. Pursuant to the Code of Criminal Procedure, Article 42.22, the victim or an attorney for the state may file a lien on any interest in a motor vehicle of a person convicted of a criminal offense to secure payment of restitution or fines or costs. This section establishes the procedures to perfect the filing and the removal of the lien on any interest of the defendant in a motor vehicle whether then owned or after-acquired.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Department--The Texas Department of Motor Vehicles.

(2) Restitution lien--A lien placed against a defendant's motor vehicle in order to recoup a judgment or fines or costs.

(3) State--The State of Texas and all its political subdivisions.

(4) Victim--A close relative of a deceased victim, guardian of a victim, or victim, as those terms are defined by the Code of Criminal Procedure, Article 56.01.

(c) Persons who may file a restitution lien. The following persons may file a restitution lien:

(1) a victim of a criminal offense to secure the amount of restitution to which the victim is entitled under the order of a court in a criminal case; and

(2) an attorney of the state to secure the amount of fines or costs entered against a defendant in a judgment in a felony criminal case.

(d) Perfection of a restitution lien. A restitution lien against any interest in a motor vehicle must be perfected in accordance with Transportation Code, Chapter 501, and in the name of the court which established the restitution lien, in care of the court clerk. The victim or the attorney representing the state must file an application for certificate of title with a county tax-assessor collector to perfect the restitution lien. The application must be on a form prescribed by the department as described in §217.4 of this title (relating to Initial Application for Title), and shall be supported by, at a minimum, the following documents:

(1) evidence of motor vehicle ownership, as described in §217.5 of this title (relating to Evidence of Motor Vehicle Ownership), which is properly assigned to or issued in the name of the defendant;

(2) an original or certified copy of the court order or judgment establishing the restitution lien and requiring the defendant to pay restitution, fines, or costs; and

(3) an affidavit to perfect a restitution lien which must include, at a minimum:

(A) the name and birth date of the defendant whose interest in the motor vehicle is subject to the lien;

(B) the residence or principal place of business of the person named in the lien, if known;

(C) the criminal proceeding giving rise to the lien, including the name of the court, the name of the case, and the court's file number for the case;

(D) the name and address of the attorney representing the state and the name and address of the person entitled to restitution;

(E) a statement that the notice is being filed pursuant to Code of Criminal Procedure, Article 42.22;

(F) the amount of restitution, fines, and costs the defendant has been ordered to pay by the court;

(G) a statement that the amount of restitution owed at any one time may be less than the original balance and that the outstanding balance is reflected in the records of the clerk of the court hearing the criminal proceeding giving rise to the lien;

(H) the vehicle description (year, make, and vehicle identification number) of the motor vehicle for which the restitution lien is to be perfected; and

(I) the signature of the attorney representing the state or a magistrate.

(e) Fees. The applicant will be required to pay a $5 [~~$5.00~~] restitution lien filing fee, in addition to a title application fee in accordance with Transportation Code, §501.138, and any other applicable fees required by Transportation Code, Chapters 501, 502, and 520.

(f) Recording a restitution lien. Upon receiving a completed application for certificate of title, the required supporting documents and any applicable fees, the department or its designated agent will process and issue a certificate of title recording the restitution lien. The original certificate of title shall be mailed to the first lienholder, in accordance with Transportation Code, §501.027.

(g) Release of perfected restitution liens. The clerk of the court recorded as the lienholder will receive payments from the defendant and maintain a record of the outstanding balance of restitution, fines, or costs owed by the defendant. Upon satisfaction of the lien, the clerk of the court shall execute the release of lien as described in §217.106 of this title (relating to Discharge of Lien). [~~Liens).~~] The release of lien must be provided to the owner or owner's designee. A photocopy of the release of lien shall be forwarded to the department for filing.

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. DEPUTIES

43 TAC §217.163

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department; and more specifically, Transportation Code, §501.0041, which provides the department may adopt rules to administer Transportation Code, Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Transportation Code, Chapter 502, Registration of Vehicles; and Transportation Code, §520.0071, which provides the board by rule shall prescribe the classification types of deputies performing titling and registration duties, the duties and obligations of deputies, the type and amount of any bonds that may be required by a county tax assessor-collector for a deputy to perform titling and registration duties, and the fees that may be charged or retained by deputies.

CROSS REFERENCE TO STATUTE

Health and Safety Code, §382.202 and §382.203; and Transportation Code, §§501.002, 501.091, 501.1001, and 501.1002.

§217.163. Full Service Deputies.

(a) A county tax assessor-collector, with the approval of the commissioners court of the county, may deputize a person to act as a full service deputy in the same manner and with the same authority as though done in the office of the county tax assessor-collector, subject to the criteria and limitations of this section, including signing the addendum as [~~entering into the agreement~~] specified in subsection (k) [~~(j)~~] of this section.

(b) A full service deputy must offer and provide titling and registration services to the general public, and must accept any application for registration, registration renewal, or title transfer that the county tax assessor-collector would accept and process, unless otherwise limited by the county.

(c) The county tax assessor-collector may impose reasonable obligations or requirements upon a full service deputy in addition to those set forth in this section. [~~The additional obligations or requirements must be reflected in the agreement specified in subsection (j) of this section.~~]

(d) To be eligible to serve as a full service deputy, a person must be trained, as approved by the county tax assessor-collector, to perform motor vehicle titling, registration, and registration renewal services, or otherwise be deemed competent by the county tax assessor-collector to perform such services.

(e) To be eligible to serve as a full service deputy, a person must post a bond payable to the county tax assessor-collector consistent with §217.167 of this title (relating to Bonding Requirements) with the bond conditioned on the person's proper accounting and remittance of the fees the person collects.

(f) A person applying to be a full service deputy must complete the application process as specified by the county tax assessor-collector. The application process may include satisfaction of any bonding requirements and completion of any additional required documentation or training of the deputy before the processing of any title, registration, or registration renewal applications may occur.

(g) A full service deputy must provide the physical address at which services will be offered, the mailing address, the phone number, and the hours of service. This information may be published on the department's website and may be published by the county if the county publishes a list of deputy locations.

(h) A full service deputy shall keep a separate accounting of the fees collected and remitted to the county and a record of daily receipts.

(i) A full service deputy may charge or retain fees consistent with the provisions of §217.168 of this title (relating to Deputy Fee Amounts).

(j) A full service deputy must maintain records in compliance with the State of Texas Records Retention Schedule as promulgated by the Texas State Library and Archives Commission.

(k) Beginning January 1, 2017, a full service deputy must sign an addendum provided by the department outlining the terms and conditions of the full service deputy's access to and use of the department's registration and titling system. Any contract or agreement, or renewal of the contract or agreement, between the county and the full service deputy that authorizes the full service deputy to provide registration and titling services in the county must specifically incorporate the addendum by reference, and the contract or agreement may not supersede or contradict any term within the addendum. An addendum described by this subsection is required for each location at which the full service deputy operates. The addendum must be incorporated into any agreement or contract between the full service deputy and the county beginning January 1, 2017. The county must provide the department a current copy of each contract or agreement, including any amendments, with a full service deputy within 60 days of execution.

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SUBCHAPTER A. MOTOR VEHICLE TITLES

43 TAC §217.9

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 217, Subchapter A, §217.9, Bonded Titles.

EXPLANATION OF PROPOSED AMENDMENTS

A person who has an interest in a motor vehicle in which the department has refused to issue a title or has suspended or re-

voked a title under Transportation Code, §501.051, may, under certain conditions, obtain a title to the motor vehicle by filing a bond with the department.

Proposed amendment to §217.9(c)(3) is to clarify the value of the bond. If the motor vehicle is 25 years or older and the appraised value is less than $4000, then the bond amount will be established from a value of $4000.

Proposed amendment to §217.9(d) is to clarify that the vehicle identification number inspection can be verified by a Texas licensed Safety Inspection Station or, a member of the National Insurance Crime Bureau, the Federal Bureau of Investigation, or law enforcement auto theft unit.

Proposed amendment to §217.9(e)(1) is to clarify the documentation required to apply for a bonded title. The verification of the vehicle identification number must be on a form specified by the department as well as proof of the vehicle identification number inspection as proposed in §217.9(d).

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments.

Jeremiah Kuntz, Director of Vehicle Titles and Registration, has certified that there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT AND COST

Mr. Kuntz has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be accuracy, clarity, and consistency in the department's rules. Mr. Kuntz has also determined there are no anticipated economic costs for persons required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses or micro-businesses.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to *rules@txdmv.gov.* The deadline for receipt of comments is 5:00 p.m. on October 24, 2016.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and more specifically, Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 501 and 520, and §§502.041, 502.042, and 502.192.

§217.9. Bonded Titles.

(a) Who may file. A person who has an interest in a motor vehicle to which the department has refused to issue a title or has suspended or revoked a title may request issuance of a title from the department on a prescribed form if the vehicle is in the possession of the applicant; and

(1) there is a record that indicates a lien that is less than ten years old and the surety bonding company ensures lien satisfaction or release of lien;

(2) there is a record that indicates there is not a lien or the lien is ten or more years old; or

(3) the department has no previous motor vehicle record.

(b) Administrative fee. The applicant must pay the department a $15 administrative fee in addition to any other required fees.

(c) Value. The amount of the bond must be equal to one and one-half times the value of the vehicle as determined using the Standard Presumptive Value (SPV) from the department's Internet website. If the SPV is not available, then a national reference guide will be used. If the value cannot be determined by either source, then the person may obtain an appraisal.

(1) The appraisal must be on a form specified by the department [~~form~~] from a Texas licensed motor vehicle dealer for the categories of motor vehicles that the dealer is licensed to sell or a Texas licensed insurance adjuster who may appraise any type of motor vehicle.

(2) The appraisal must be dated and be submitted to the department within 30 days of the appraisal.

(3) If the motor vehicle is 25 years or older and[~~,~~] the appraised value of the vehicle is [~~cannot be~~] less than $4,000, then the bond amount will be established from a value of $4,000.

(d) Vehicle identification number [~~Out-of-state vehicle~~] inspection. If the department has no motor vehicle record for the vehicle, [~~applicant is a Texas resident, but the evidence indicates that the vehicle is an out-of-state vehicle,~~] the vehicle identification number must be verified by a Texas licensed Safety Inspection Station or, a member of the National Insurance Crime Bureau, Federal Bureau of Investigation, or law enforcement auto theft unit. The inspection must be documented on a form specified by the department [~~a law enforcement officer who holds an auto theft certification~~].

(e) Required documentation. An applicant may apply for a bonded title if the applicant submits:

(1) verification of the vehicle identification number on a form specified by the department [~~a pencil tracing or photo of the vehicle identification number, or if unable then a Statement of Physical Inspection, Form VTR-270~~];

(2) any evidence of ownership;

(3) the original bond within 30 days of issuance;

(4) the rejection letter within one year of issuance and the receipt for $15 paid to the department;

(5) the documentation determining the value of the vehicle;

(6) proof of the [~~an out-of-state~~] vehicle identification number inspection [~~certificate~~], as described in subsection (d) of this

section, if the department has no motor vehicle record for the vehicle [~~there is no Texas record~~];

(7) a weight certificate if there is no title or the vehicle is an out of state commercial vehicle;

(8) a certification of lien satisfaction by the surety bonding company or a release of lien if the rejection letter states that there may be a lien less than ten years old; and

(9) any other required documentation and fees.

(f) Report of Judgment. The bond must require that the surety report payment of any judgment to the department within 30 days.

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

Filed with the Office of the Secretary of State on September 7, 2016.

TRD-201604666
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 465-5665

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SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.57

The Texas Department of Motor Vehicles (department) proposes new §217.57, Alternatively Fueled Vehicles.

EXPLANATION OF PROPOSED NEW SECTION

New §217.57 is proposed to implement House Bill 735, 84th Legislature, Regular Session, 2015, regarding the collection of information on the number of alternatively fueled vehicles registered in this state. House Bill 735 added Transportation Code, §502.004, Information on Alternatively Fueled Vehicles, which requires the department, by rule, to establish a program to collect information about the number of alternatively fueled vehicles in this state. Section 502.004 also requires the department to submit an annual report to the legislature that includes the information collected, including, at a minimum, the number of vehicles that use electric plug-in drives, hybrid electric drives, compressed natural gas drives, and liquefied natural gas drives.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the new section as proposed is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed new section.

Jeremiah Kuntz, Director of the Vehicle Titles and Registration Division, has certified that there will be no impact on local economies or overall employment as a result of enforcing or administering the proposed new section.

PUBLIC BENEFIT AND COST

Mr. Kuntz has also determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of enforcing or administering the new section will be the ability to more adequately plan and estimate funding levels for long-term infrastructure needs involving building and maintaining Texas roadways. The accuracy of fuel tax revenue forecasts will increase. There are no anticipated economic costs for persons required to comply with the new section as proposed. There will be no adverse economic effect on small businesses or micro-businesses.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed new section may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to *rules@txdmv.gov.* The deadline for receipt of comments is 5:00 p.m. on October 24, 2016.

STATUTORY AUTHORITY

The new section is proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and more specifically, Transportation Code, §502.004, which requires the department to establish a program, by rule, about the number of alternatively fueled vehicles registered in this state.

CROSS REFERENCE TO STATUTE

Transportation Code, §§501.021, 502.040, and 502.043.

§217.57. Alternatively Fueled Vehicles.

The department shall collect vehicle fuel type information for motor vehicles registered in this state, including alternatively fueled vehicles, as defined by Transportation Code, §502.004, and submit an annual report to the legislature that includes the information collected under this section.

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

Filed with the Office of the Secretary of State on September 7, 2016.

TRD-201604667
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: October 23, 2016
For further information, please call: (512) 465-5665

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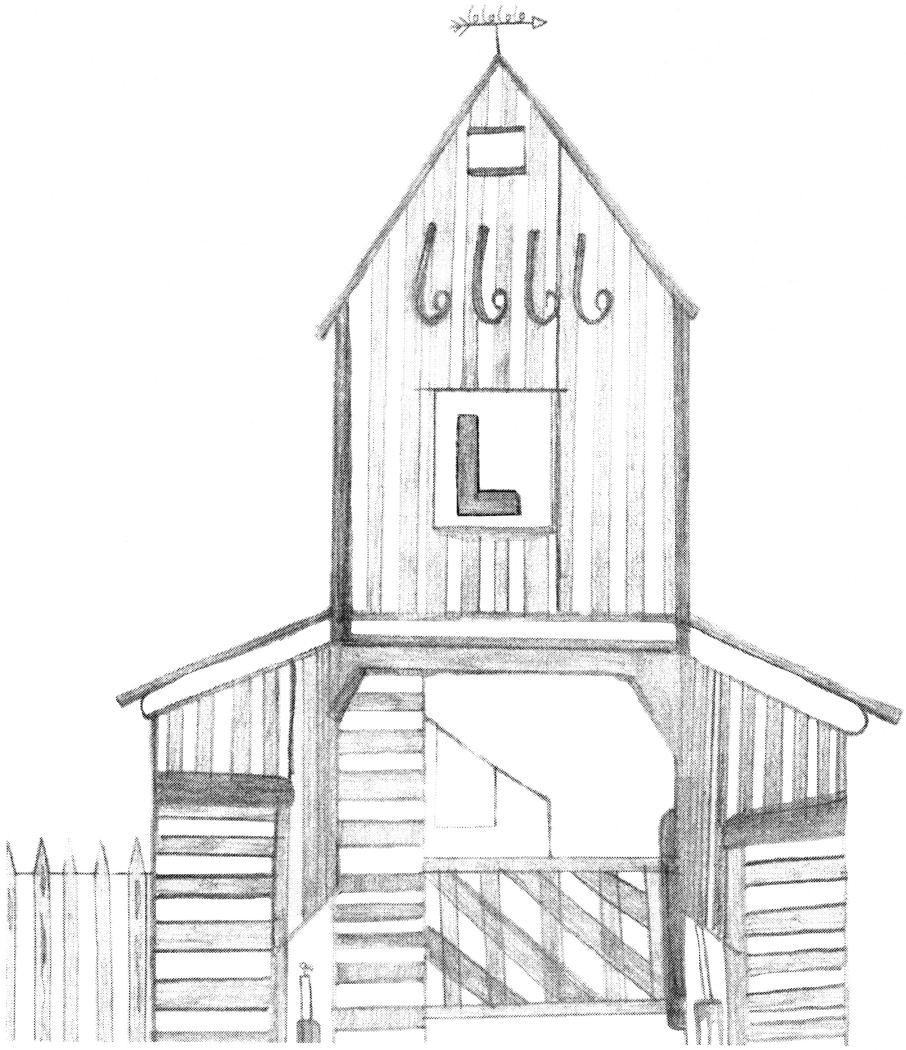

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 77. LOANS, INVESTMENTS, SAVINGS, AND DEPOSITS

SUBCHAPTER A. AUTHORIZED LOANS AND INVESTMENTS

7 TAC §77.11

Proposed amended §77.11, published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1609), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on September 7, 2016.

TRD-201604680

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 100. GENERAL PROVISIONS

22 TAC §100.12

The State Board of Dental Examiners withdraws the proposed new §100.12 which appeared in the September 16, 2016, issue of the *Texas Register* (41 TexReg 7238).

Filed with the Office of the Secretary of State on September 8, 2016.

TRD-201604701
Kelly Parker
Executive Director
State Board of Dental Examiners
Effective date: September 8, 2016
For further information, please call: (512) 475-0977

♦ ♦ ♦

Devin McQueen
10th Grade

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 5. TEXAS FACILITIES COMMISSION

CHAPTER 126. SURPLUS AND SALVAGE PROPERTY PROGRAMS

SUBCHAPTER A. STATE SURPLUS AND SALVAGE PROPERTY

1 TAC §§126.1, 126.4, 126.5

Introduction and Background.

The Texas Facilities Commission ("TFC") adopts amendments to §§126.1, 126.4, and 126.5 of Title 1, Part 5, Chapter 126 of the Texas Administrative Code, with changes to the proposed text as published in the April 15, 2016, issue of the *Texas Register* (41 TexReg 2639).

During its rule review, published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8915), the Texas Facilities Commission ("Commission" or "TFC") reviewed and considered Texas Administrative Code, Title 1, Chapter 126 for readoption, revision, or repeal in accordance with the Texas Government Code §2001.039 (West 2008). The Commission determined that Texas Administrative Code, Title 1, §§126.1 - 126.5 were still necessary as these rules were promulgated to direct the transfer, sale, auction, or other disposition of State of Texas surplus and salvage property either by the state agency that owns the subject property or by the Commission, on behalf of the State of Texas under Texas Government Code, Chapter 2175. Revisions to these rules, however, were required to ensure consistency with governing statutes and to correct typographical errors. Accordingly, the Commission proposed amendments to Chapter 126. Notice of the proposed amendments was published in the April 15, 2016, issue of the *Texas Register* (41 TexReg 2639).

Justification for the Rule.

Proposed revisions to existing rules are required to reflect the agency's name change, to ensure consistency with governing statutes, and to correct typographical errors. Section 126.1 defines terms used in the subchapter addressing state surplus and salvage property. The adopted amendment will add definitions that will address changes made to §2175.1825 and §2175.241 of the Texas Government Code. Section 126.4 establishes rules for the direct transfer, priority, reporting and other disposition of surplus and salvage property. The adopted amendment is required to conform to changes made to §2175.184 and §2175.541 of the Texas Government Code. Section 126.5 addresses disposition of surplus and salvage property to the public. The adopted amendment is required to address changes to §2174.190 and §2175.241 of the Texas Government Code. Due to comments received by another state agency, the Commission is adopting the amendments to Chapter 126 with changes.

Comments.

The 30-day comment period ended on May 16, 2016. During the 30-day comment period, the Commission received written comments from the Texas Department of Transportation ("TXDOT"). Summary of the comments and the Commission's response follow:

Proposed amendment to §126.1, adding definition of "Surplus Advertising Period": proposed definition conflicts with statute.

Commission response: Deleted the proposed definition from the adopted rules.

Proposed amendment to §126.4, adding language regarding direct transfer fees: TXDOT requested further clarification concerning the direct transfer fee. Specifically, TXDOT seeks clarification on whether the direct transfer fee is the price established for the property or is intended to be a fee in addition to the established price and which agency, the Commission or the selling state agency, receives the proposed fee.

Commission response: Deleted the proposed language from the adopted rules. TFC added language that will make §126.4(a)(2) conform with statutory changes by changing the posting from the State Comptroller's website to TFC's website.

Proposed amendment to §126.5, adding subsection (c): TXDOT requests clarification as to whether the fee to TFC would be charged only for donations made by TFC under subsection (c)(1), or whether the fee would also be charged to donations made by state agencies under subsection (c)(2).

Commission response: The Government Code gives TFC the authority to charge a fee. While TFC anticipates in most situations where TFC has minimal involvement, no fee would be collected on behalf of TFC. In the event that TFC encounters a situation where more costs are incurred with the transaction, TFC reserves the right to collect the fee.

Proposed amendment to §126.5, adding subsection (d): TXDOT requests that the terms "Small Value Items" and "Capital Assets" be defined and requests clarification as to the Commission's authority to withhold 12 percent from the proceeds of a sale or transfer.

Commission response: Added clarifying language as to the definition of "Small Value Items", as well as clarifying language that TFC seeks to recover costs, and deleted the language related to "Capital Assets" and withholding 12 percent.

Statutory Authority.

The amended rules are adopted under Texas Government Code §§2175.1825(a), 2175.184(a), 2175.190(c), and 2175. 241(a), (b), (c), and (d) (West 2008 & Supp. 2015).

Cross Reference to Statute.

The statutory provisions affected by the adopted rules are those set forth in Chapter 2175 of the Texas Government Code.

§126.1. Definitions.

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

(1) Certificate of Acquisition--A form prescribed by the Commission that verifies the qualifications of an approved assistance organization or political subdivision as an entity entitled to receive state surplus or salvage property.

(2) Commission--The Texas Facilities Commission.

(3) Local Governmental Entity--Each local government entity of the state, including counties, municipalities, and special purpose districts such as school districts, districts for fire and emergency services, including volunteer fire departments, utility and water districts, and health districts.

(4) Political subdivision--Each political subdivision of the state, including counties, municipalities, public school districts, volunteer fire departments.

(5) State agency--

(A) a department, commission, board, office, or other agency in the executive branch of state government created by the state constitution or a state statute;

(B) the supreme court, the court of criminal appeals, a court of appeals, or the Texas Judicial Council; and

(C) the Civil Air Patrol, Texas Wing.

§126.4. Direct Transfer, Priority, Reporting, and Other Disposition.

(a) Priority of claim.

(1) The first state agency, political subdivision or assistance organization that agrees to the established price before the expiration of ten (10) business days shall be entitled to the property; provided, however, a state agency shall have first priority over all other entities.

(2) In the event two competing and equivalent requests are received from parties of equal standing, the Commission shall award the property in the best interests of the state. Two or more requests shall be considered "competing and equivalent" for purposes of this section if each meets the established price on the same business day and within the ten (10) business day period following posting on the Commission's website.

(b) Reporting requirements. When a transfer of property is made to a political subdivision or assistance organization, the state agency disposing of the property must ensure the completion of a "Certificate of Acquisition" form. In completing the Certificate of Acquisition, the political subdivision or assistance organization certifies its continued qualification as an entity entitled to receive state surplus or salvage property, acknowledges receipt of property, and certifies that the property will be used for the purpose expressed by the organization at the time of application. The completed "Certificate of Acquisition" is to be retained by the state agency and a copy should be sent to the Commission within 5 business days of transfer. After the transfer, the state agency disposing of the property must document the proceeds from sale into the Comptroller's State Property Accounting System.

§126.5. Disposition of Surplus and Salvage Property to the Public by Competitive Bidding, Auction, or Direct Sale.

(a) Method of Sale. The Commission will consider the following criteria when determining the method of sale for surplus and salvage property:

(1) geographic location;

(2) cost of transportation if applicable;

(3) sales history for similar property;

(4) type of property; and

(5) condition of property.

(b) Disposition by direct sale to the public.

(1) Location and method of direct sales. Direct sales operations may be conducted at designated state facilities or warehouses approved by the Commission or by live or Internet auction.

(A) Access. The general public, political subdivision, and assistance organizations will have equal access.

(B) Payment. A purchaser under this section must pay for the surplus or salvage property by an approved method of payment at the time of sale and prior to obtaining possession or actual title to the property.

(C) Live auctions. Surplus or salvage property sold through the live auction method shall be accompanied by an auctioneer's paid receipt. The auctioneer's paid receipt will serve as the authorization of the Commission that the purchaser has in good faith complied with the conditions of the sale.

(D) Internet auctions. The Commission may contract with one or more commercial Internet auction sites for sale of state surplus or salvage property. Property on the Internet auction site shall be posted for at least ten (10) calendar days.

(2) Transfer of property. When a purchaser or successful bidder has paid the full amount due for the purchase of surplus or salvage property, the Commission or its designee shall notify both the successful bidder and the state agency holding the title of the surplus or salvage property and authorize the transfer of possession. In the case of vehicles or other items which require title transfer, it shall be the responsibility of the state agency holding title to complete the transfer of title to the purchaser or successful bidder.

(3) Forfeiture. In the event a purchaser or successful bidder pays for the property, but fails to remove the property within the time specified, the purchaser or successful bidder forfeits his rights to the property and any monies tendered, and ownership of the property reverts to the state.

(c) Direct Donations to Assistance Organizations and Local Governmental Entities.

(1) If the Commission determines that disposition by public sale is not in the State's best interest then the Commission may destroy the property as worthless salvage or donate it to an assistance organization or local government entity.

(2) A State agency may also make similar donations if the agency first notifies the Commission and provides sufficient information for the Commission to determine the donation is in the State's best interest. The State agency is responsible for documenting the donation and any proceeds in the Comptroller's State Property Accounting System.

(3) The Commission may charge the recipient a fee (not to exceed 10% of the item's market value) to cover the costs of the donation.

(d) Returns on Small Value Items--For the purpose of this section, Small Value Items are non-capitalized items in the Comptroller's State Property Accounting System. The Commission may not provide participating State agencies with monetary returns on the transfer or sale of that agency's small value items. However, the Commission will allow the State agency to receive a return in the form of transfers of similar items at zero or reduced cost.

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, 2016.

TRD-201604735
Kay Molina
General Counsel
Texas Facilities Commission
Effective date: September 29, 2016
Proposal publication date: April 15, 2016
For further information, please call: (512) 475-2400

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 3. MEDICAID HOME HEALTH SERVICES

1 TAC §354.1039

The Texas Health and Human Service Commission (HHSC) adopts an amendment to §354.1039, concerning Home Health Services Benefits and Limitations, with changes to the proposed text as published in the June 17, 2016, issue of the *Texas Register* (41 TexReg 4372). The text of the rule will be republished.

BACKGROUND AND JUSTIFICATION

Section 354.1039 required that a prior authorization request for repairs of durable medical equipment (DME) or appliances include a statement or medical information from the attending physician substantiating that the medical appliance or equipment continues to serve a specific medical purpose and an itemized estimated cost list of the repairs. The requirement for a statement from the attending physician was administratively burdensome on DME providers requesting prior authorization for the repair of a DME or appliance. In addition, it is not required by federal law. Therefore, HHSC amended the rule to remove this requirement.

COMMENTS

The 30-day comment period ended July 18, 2016. During this period, HHSC received comments regarding the amended rule from the Coalition for Nurses in Advanced Practice. A summary of the comments relating to the rule and HHSC's responses follows.

Comment: The commenter supports dropping the requirement for a physician statement before repairing durable medical equipment or appliances.

Response: HHSC appreciates the comment.

Comment: The commenter requests that HHSC revise subsections (a)(7)(A) and (a)(8)(A) of the proposed rule to include nurse practitioners, clinical nurse specialists, certified nurse-midwives, and physician assistants as medical practitioners who may sign an order for diabetic equipment and supplies. The commenter states that this would be consistent with Texas law, citing Texas Government Code §531.099, which requires HHSC to align Medicaid diabetic equipment and supplies written order procedures with Medicare procedures. The commenter also states that this would be consistent with federal law, citing 42 C.F.R. §440.70.

Response: HHSC declines to amend the proposed rule as the commenter suggests. Contrary to the commenter's assertion, 42 C.F.R. §440.70(a)(2) requires that an order for home health services, which includes medical supplies, equipment, and appliances (see 42 C.F.R. §440.70(b)(3)), be the order of a physician. Moreover, although the federal Centers for Medicare and Medicaid Services (CMS) recently amended §440.70, it did not amend the physician order requirement. *See* 81 Fed. Reg. 5530 (2016). Finally, CMS has not granted approval of a waiver to this federal requirement. *See* Tex. H.B. 1487, 81st Leg., R.S., §3.

Comment: The commenter requests that HHSC revise subsection (b)(1)(A) and add a new subsection (b)(1)(C) to allow a nurse practitioner, clinical nurse, specialist, or physician assistant to perform a face-to-face encounter within 30 days prior to starting home health services. This is consistent, the commenter states, with 42 C.F.R. §440.70(f) and (g).

Response: HHSC agrees and has revised the rule for adoption as the commenter suggests.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

§354.1039. Home Health Services Benefits and Limitations.

(a) The Health and Human Services Commission or its designee (HHSC) determines authorization requirements and limitations for covered home health service benefits. The home health agency is responsible for obtaining prior authorization where specified for the healthcare service, supply, equipment, or appliance. Home health service benefits include the following:

(1) Skilled nursing. Nursing services provided by a registered nurse (RN) or licensed vocational nurse (LVN) licensed by the Texas Board of Nursing provided on a part-time or intermittent basis and furnished through an enrolled home health agency are covered benefits. Billable nursing visits may also include:

(A) nursing visits required to teach the recipient, the primary caregiver, a family member and/or neighbor how to administer or assist in a service or activity that is necessary to the care and/or treatment of the recipient in a home setting;

(B) RN visits for skilled nursing observation, assessment, and evaluation, provided a physician specifically requests that a nurse visit the recipient for this purpose.

(i) The physician's request must reflect the need for the assessment visit.

(ii) Nursing visits for the primary purpose of assessing a recipient's care needs to develop a plan of care are considered administrative and are not billable; and

(C) RN visits for general supervision of nursing care provided by a home health aide and/or others over whom the RN is administratively or professionally responsible.

(2) Home health aide services. Home health aide services to provide personal care under the supervision of an RN, a licensed physical therapist (PT), or an occupational therapist (OT) employed by the home health agency are covered benefits.

(A) The primary purpose of a home health aide visit must be to provide personal care services.

(B) Duties of a home health aide include the performance of simple procedures such as personal care, ambulation, exercise, range of motion, safe transfer, positioning, and household services essential to health care at home; assistance with medications that are ordinarily self-administered; reporting changes in the patient's condition and needs; and completing appropriate records.

(C) Written instructions for home health aide services must be prepared by an RN or therapist as appropriate.

(D) The requirements for home health aide supervision are as follows.

(i) When only home health aide services are being furnished to a recipient, an RN must make a supervisory visit to the recipient's residence at least once every 60 days. These supervisory visits must occur when the aide is furnishing patient care.

(ii) When skilled nursing care, PT, or OT are also being furnished to a recipient, an RN must make a supervisory visit to the recipient's residence at least every two weeks.

(iii) When only PT or OT is furnished in addition to the home health aide services, the appropriate skilled therapist may make the supervisory visits in place of an RN.

(E) Visits made primarily for performing housekeeping services are not covered services.

(3) Medical supplies. Medical supplies are covered benefits if they meet the following criteria.

(A) Medical supplies must be:

(i) documented in the recipient's plan of care as medically necessary and used for medical or therapeutic purposes;

(ii) supplied:

(I) through an enrolled home health agency in compliance with the recipient's plan of care; or

(II) by an enrolled medical supplier under written, signed, and dated physician's prescription; and

(iii) prior authorized unless otherwise specified by HHSC.

(B) Items which are not listed in subparagraph (C) of this paragraph may be medically necessary for the treatment or therapy of qualified recipients. If a prior authorization request is received for these items, consideration will be given to the request. Approval for reasonable amounts of the requested items may be given if circumstances justify the exception and the need is documented.

(C) Covered items include:

(i) colostomy and ileostomy care supplies;

(ii) urinary catheters, appliances and related supplies;

(iii) pressure pads including elbow and heel protectors;

(iv) incontinent supplies to include incontinent pads or diapers for clients over the age of four for medical necessity as determined by the physician;

(v) crutch and cane tips;

(vi) irrigation sets;

(vii) supports and abdominal binders (not to include braces, orthotics, or prosthetics);

(viii) medicine chest supplies not requiring a prescription (not to include vitamins or personal care items such as soap or shampoos);

(ix) syringes, needles, IV tubing and/or IV administration setups including IV solutions generally used for hydration or prescriptive additives;

(x) dressing supplies;

(xi) thermometers;

(xii) suction catheters;

(xiii) oxygen and related respiratory care supplies; or

(xiv) feeding related supplies.

(4) Durable medical equipment (DME). Durable Medical Equipment must meet the following requirements to qualify for reimbursement under Medicaid home health services.

(A) DME must:

(i) be medically necessary and the appropriateness of the health care service, supply, equipment, or appliance prescribed by the physician for the treatment of the individual recipient and delivered in his place of residence must be documented in the plan of care and/or the request form;

(ii) be prior authorized unless otherwise specified by HHSC;

(iii) meet the recipient's existing medical and treatment needs;

(iv) be considered safe for use in the home; and

(v) be provided through an:

(I) enrolled home health agency under a current physician's plan of care; or

(II) enrolled DME supplier under a written, signed, and dated physician's prescription.

(B) HHSC will determine whether DME will be rented, purchased, or repaired based upon the duration and use needs of the recipient.

(i) Periodic rental payments are made only for the lesser of:

(I) the period of time the equipment is medically necessary; or

(II) when the total monthly rental payments equal the reasonable purchase cost for the equipment.

(ii) Purchase is justified when the estimated duration of need multiplied by the rental payments would exceed the reasonable purchase cost of the equipment or it is otherwise more practical to purchase the equipment.

(iii) Repair of durable medical equipment and appliances will be considered based on the age of the item and the cost to repair the item.

(I) A request for repair of durable medical equipment or appliances must include an itemized estimated cost list of the repairs. Rental equipment may be provided to replace purchased medical equipment or appliances for the period of time it will take to make necessary repairs to purchased medical equipment or appliances.

(II) Repairs will not be authorized in situations where the equipment has been abused or neglected by the patient, patient's family, or caregiver.

(III) Routine maintenance of rental equipment is the responsibility of the provider.

(C) Covered medical appliances and equipment (rental, purchase, or repairs) include:

(i) manual or powered wheelchairs;

(I) non-customized including medically justified seating, supports, and equipment; or

(II) customized, specifically tailored or individualized, powered wheelchairs including appropriate medically justified seating, supports and equipment not to exceed an amount specified by HHSC.

(ii) canes, crutches, walkers, and trapeze bars;

(iii) bed pans, urinals, bedside commode chairs, elevated commode seats, bath chairs/benches/seats;

(iv) electric and non-electric hospital beds and mattresses;

(v) air flotation or air pressure mattresses and cushions;

(vi) bed side rails and bed trays;

(vii) reasonable and appropriate appliances for measuring blood pressure and blood glucose suitable to the recipient's medical situation to include replacement parts and supplies;

(viii) lifts for assisting recipient to ambulate within residence;

(ix) pumps for feeding tubes and IV administration; and

(x) respiratory or oxygen related equipment.

(D) Medical equipment or appliances not listed in subparagraph (C) of this paragraph may, in exceptional circumstances, be considered for payment when it can be medically substantiated as a part of the treatment plan that such service would serve a specific medical purpose on an individual case basis.

(5) Physical therapy. To be payable as a home health benefit, physical therapy services must:

(A) be provided by a physical therapist who is currently licensed by the Texas Board of Physical Therapy Examiners, or physical therapist assistant who is licensed by the Texas Board of Physical Therapy Examiners who assists and is supervised by a licensed physical therapist;

(B) be for the treatment of an acute musculoskeletal or neuromuscular condition or an acute exacerbation of a chronic musculoskeletal or neuromuscular condition;

(C) be expected to improve the patient's condition in a reasonable and generally predictable period of time, based on the physician's assessment of the patient's restorative potential after any needed consultation with the therapist; and

(D) not be provided when the patient has reached the maximum level of improvement. Repetitive services designed to maintain function once the maximum level of improvement has been reached are not a benefit. Services related to activities for the general good and welfare of patients such as general exercises to promote overall fitness and flexibility and activities to provide diversion or general motivation are not reimbursable.

(6) Occupational therapy. To be payable as a home health benefit, occupational therapy services must be:

(A) provided by one who is currently registered and licensed by the Texas Board of Occupational Therapy Examiners or by an occupational therapist assistant who is licensed to assist in the practice of occupational therapy and is supervised by an occupational therapist;

(B) for the evaluation and function-oriented treatment of individuals whose ability to function in life roles is impaired by recent or current physical illness, injury or condition; and

(C) specific goal directed activities to achieve a functional level of mobility and communication and to prevent further dysfunction within a reasonable length of time based on the therapist's evaluation and physician's assessment and plan of care.

(7) Insulin syringes and needles. Insulin syringes and needles must meet the following requirements to qualify for reimbursement under Medicaid home health services.

(A) Pharmacies enrolled in the Medicaid Vendor Drug Program may dispense insulin syringes and needles to eligible Medicaid recipients with a physician's prescription.

(B) Prior authorization is not required for an eligible recipient to obtain insulin syringes and needles.

(C) Insulin syringes and needles obtained in accordance with this section will be reimbursed through the Medicaid Vendor Drug Program.

(D) A physician's plan of care is not required for an eligible recipient to obtain insulin syringes and needles under this section.

(8) Diabetic supplies and related testing equipment. Diabetic supplies and related testing equipment must meet the following requirements to qualify for reimbursement under Medicaid home health services.

(A) Diabetic supplies and related testing equipment must be prescribed by a physician.

(B) Prior authorization is required unless otherwise specified by HHSC.

(b) Home health service limitations include the following.

(1) Patient supervision.

(A) Patients must be seen by their physician or, if consistent with subparagraph (C) of this paragraph, a nurse practitioner, clinical nurse specialist, or physician assistant, within 30 days prior to the start of home health services. This physician visit may be waived when a diagnosis has already been established by the attending physician and the patient is currently undergoing active medical care and treatment. Such a waiver is based on the physician's statement that an additional evaluation visit is not medically necessary.

(B) Patients receiving home health care services must remain under the care and supervision of a physician who reviews and revises the plan of care at least every 60 days or more frequently as the physician determines necessary.

(C) If the face-to-face encounter is performed by a nurse practitioner, clinical nurse specialist, or physician assistant, the practitioner must communicate the clinical findings of that encounter to the ordering physician, and the physician ordering the services must:

(i) record the date of the face-to-face encounter and the practitioner who conducted the encounter;

(ii) affirm that the face-to-face encounter is related to the primary reason the patient requires home health services and that the encounter occurred within 30 days prior to the start of home health services; and

(iii) include the clinical findings of the encounter in the patient's medical record.

(2) Time limited prior authorizations.

(A) Prior authorizations for payment of home health services may be issued by HHSC for a service period not to exceed 60 days on any given authorization. Specific authorizations may be limited to a time period less than the established maximum. When the need for home health services exceeds 60 days, or when there is a change in the service plan, the provider must obtain prior approval and retain the physician's signed and dated orders with the revised plan of care.

(B) The provider shall be notified by HHSC in writing of the authorization (or denial) of requested services.

(C) Prior authorization requests for covered Medicaid home health services must include the following information:

(i) The Medicaid identification form with the following information:

(I) full name, age, and address;

(II) Medical Assistance Program Identification number;

(III) health insurance claim number (where applicable); and

(IV) Medicare number;

(ii) the physician's written, signed, and dated plan of care (submitted by the provider if requested);

(iii) the clinical record data (completed and submitted by provider if requested);

(iv) a description of the home or living environment;

(v) a composition of the family/caregiver;

(vi) observations pertinent to the overall plan of care in the home; and

(vii) the type of service the patient is receiving from other community or state agencies.

(D) If inadequate or incomplete information is provided, the provider will be requested to furnish additional documentation as required to make a decision on the request.

(3) Medication administration. Nursing visits for the purpose of administering medications are not covered if:

(A) the medication is not considered medically necessary to the treatment of the individual's illness;

(B) the administration of medication exceeds the therapeutic frequency or duration by accepted standards of medical practice;

(C) there is not a medical reason prohibiting the administration of the medication by mouth; or

(D) the patient, a primary caregiver, a family member, and/or a neighbor has been taught or can be taught to administer intramuscular (IM) and intravenous (IV) injections.

(4) Prior approval. Services or supplies furnished without prior approval, unless otherwise specified by HHSC, are not benefits.

(5) Recipient residence. Services, equipment, or supplies furnished to a recipient who is a resident or patient in a hospital, skilled nursing facility, or intermediate care facility are not benefits.

(c) Home health services are subject to utilization review, which includes the following:

(1) the physician is responsible for retaining in the client's record a copy of the plan of care and/or a copy of the request form documenting the medical necessity of the health care service, supply, equipment, or appliance and how it meets the recipient's health care needs;

(2) the home health services provider is responsible for documenting the amount, duration, and scope of services in the recipient's plan of care, the equipment/supply order request, and the client record based on the physician's orders. This information is subject to retrospective review; and

(3) HHSC may establish random and targeted utilization review processes to ensure the appropriate utilization of home health benefits and to monitor the cost effectiveness of home health services.

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 12, 2016.

TRD-201604737
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: October 2, 2016
Proposal publication date: June 17, 2016
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 7. PESTICIDES

SUBCHAPTER H. STRUCTURAL PEST CONTROL SERVICE

DIVISION 1. GENERAL PROVISIONS

4 TAC §7.115

The Texas Department of Agriculture (the Department) adopts new Texas Administrative Code (TAC), Title 4, Part 1, Chapter 7, Subchapter H, Division 1, §7.115, Structural Pest Control Enforcement, relating to penalties for violations of Subchapter H. The new rule is adopted without changes to the proposal published in the July 29, 2016, issue of the *Texas Register* (41 TexReg 5493). The penalties set forth in the attachment to §7.115, the Penalty Matrix (Matrix), are created to deter conduct detrimental to public health and safety, the environment, and consumer confidence and to prevent unfair competition by noncompliant businesses.

No comments were received during the comment period.

The new rule is adopted under Chapter 12 of the Texas Agriculture Code, which authorizes the Department to prescribe and assess administrative penalties to enforce structural pest control laws and regulations, and Chapter 1951 of the Occupations Code, which authorizes the Department to regulate certain structural pest control activities in this state.

The adoption is made under Chapter 12 of the Texas Agriculture Code and Chapter 1951 of the Occupations Code.

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, 2016.

TRD-201604687
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Effective date: September 27, 2016
Proposal publication date: July 29, 2016
For further information, please call: (512) 463-4075

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CHAPTER 30. COMMUNITY DEVELOPMENT

SUBCHAPTER A. TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

DIVISION 3. ADMINISTRATION OF PROGRAM FUNDS

4 TAC §§30.50, 30.55, 30.58

The Texas Department of Agriculture (Department) adopts amendments to Title 4, Chapter 30, Subchapter A, Division 3, §§30.50, 30.55, and 30.58, relating to the Texas Community Development Block Grant (CDBG) Program. The amendments are adopted without changes to the proposal published in the July 15, 2016, edition of the *Texas Register* (41 TexReg 5129). The amendments to the CDBG programs permit flexibility in the application and eligibility process, and enable maximum benefit to those communities in need.

The Department received one comment from GrantWorks, Inc., recommending a scoring change which would require applicants to prioritize their Colonia Construction Fund applications in order to ensure funds are not concentrated in a few counties. The Department recognizes the importance of an equitable distribution of grants through the overall CDBG program. The primary goal of the colonia set aside is to assist communities with the greatest need; however, the Department may consider including the recommendation in the scoring criteria in the future.

The amendments are adopted under Texas Government Code §487.051, which provides the Department the authority to administer the state's CDBG non-entitlement program, and §487.052, which provides authority for the Department to adopt rules as necessary to implement Chapter 487.

The code affected by the adoption is Texas Government Code Chapter 487.

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, 2016.

TRD-201604639
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Effective date: September 26, 2016
Proposal publication date: July 15, 2016
For further information, please call: (512) 463-4075

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PART 12. TEXAS A&M FOREST SERVICE

CHAPTER 216. RURAL VOLUNTEER FIRE DEPARTMENT ASSISTANCE PROGRAM

4 TAC §§216.2, 216.3, 216.6

Texas A&M Forest Service (the agency) adopts amendments to 4 TAC §§216.2, 216.3 and 216.6, concerning the Rural Volunteer Fire Department Assistance Program. The amendments are adopted without changes to the proposed text as published in the August 12, 2016, issue of the *Texas Register* (41 TexReg 5858).

The adopted amendments comply with the requirements of Texas Government Code, §614.106, which requires the agency director adopt rules for the administration of the Rural Volunteer Fire Department Assistance Program to assist volunteer fire departments in paying for equipment, training of personnel, including determining reasonable criteria for the distribution of money from the volunteer fire department assistance fund. The amendments are non-substantive in nature and change the definition of a fire department from recognized to chartered.

The agency received no written comments regarding the adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code §614.102 and §614.106, which authorize the agency director to adopt rules considered necessary for the administration of the program.

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 12, 2016.

TRD-201604752
Robby DeWitt
Associate Director for Finance and Administration
Texas A&M Forest Service
Effective date: October 2, 2016
Proposal publication date: August 12, 2016
For further information, please call: (979) 458-7341

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT SUBCHAPTER B. POWERS AND RESPONSIBILITIES

16 TAC §60.24

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter B, §60.24, regarding the Procedural Rules of the Commission and the Department, with changes to the proposed text as published in the June 3, 2016, issue of the *Texas Register* (41 TexReg 3969). The rules will be republished.

Senate Bill 202, 84th Legislature, Regular Session (2015), transferred seven programs from the Texas Department of State Health Services to the Department to include, Athletic Trainers, Dietitians, Hearing Instrument Fitters and Dispensers, Licensed Dyslexia Therapists and Practitioners, Midwives, Orthotists and Prosthetists and Speech-Language Pathologists and Audiologists. In addition, House Bill 3315, 84th Legislature, Regular Session (2015), changed the Medical Advisory Committee to the Combative Sports Advisory Board. The adopted amendments primarily updates the list of Advisory Boards to include the additional advisory boards added from program transfers. The adopted amendments are necessary to comply with Texas Government Code, §2110.008.

The adopted amendments to §60.24 add the Advisory Board of Athletic Trainers, Dietitians Advisory Board, Dyslexia Therapists and Practitioners Advisory Committee, Hearing Instrument Fitters and Dispensers Advisory Board, Midwives Advisory Board, Orthotists and Prosthetists Advisory Board and Speech-Language Pathologists and Audiologists Advisory Board with respective abolishment dates. Editorial changes are also made to renumber the section accordingly.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the June 3, 2016, issue of the *Texas Register* (41 TexReg 3969). The deadline for public comments was July 5, 2016. The Department received a comment from one interested party on the proposed rules during the 30-day public comment period.

Comment--The commenter asked what happens when the Advisory Board of Athletic Trainers is abolished.

Department Response--The Department is required to update the abolishment dates of the advisory boards to comply with Texas Government Code, §2110.008. If the abolishment date approaches and the Department still has statutory authority over the program and the advisory board the date will be extended. The Department did not make any changes to the rules based on this comment.

The amendment is adopted under Texas Occupations Code, Chapter 51, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

In addition, the following statutes establishing advisory boards/committees/councils are affected: Texas Agriculture Code, Chapters 301 and 302 (Weather Modification and Control); Texas Health and Safety Code, Chapters 754 (Elevators, Escalators, and Related Equipment) and 755 (Boilers); Government Code, Chapter 469 (Elimination of Architectural Barriers); and Texas Occupations Code Chapters 203 (Midwives), 401 (Speech-Language Pathologists and Audiologists), 402 (Hearing Instrument Fitters and Dispensers), 403 (Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists), 451 (Athletic Trainers), 605 (Orthotists and Prosthetists), 701 (Dietitians), 802 (Dog or Cat Breeders), 1151 (Property Tax Professionals), 1152 (Property Tax Consultants), 1302 (Air Conditioning and Refrigeration Contractors), 1305 (Electricians), 1601 (Barbers), 1602 (Cosmetologists), 1603 (Regulation of Barbering and Cosmetology), 1703 (Polygraph Examiners), 1802 (Auctioneers), 1901 (Water Well Drillers), 1902 (Water Well Pump Installers), 2052 (Combative Sports), 2303 (Vehicle Storage Facilities), 2306 (Vehicle Protection Product Warrantors), 2308 (Vehicle Towing and Booting), and 2309 (Used Automotive Parts Recyclers). No other statutes, articles, or codes are affected by the proposal.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§60.24. Advisory Boards.

(a) Unless otherwise provided by law, the presiding officer of the commission, with the commission's approval, shall appoint the members of each advisory board.

(b) The purpose, duties, manner of reporting, and membership requirements of each advisory board are detailed in the statutes and rules of the specific program regulated by the department.

(c) In accordance with Texas Government Code, §2110.008, the commission establishes the following periods during which the advisory boards listed will continue in existence. The automatic abolishment date of each advisory board will be the date listed for that board unless the commission subsequently establishes a different date:

(1) Advisory Board of Athletic Trainers--09/01/2024;

(2) Advisory Board on Barbering--09/01/2024;

(3) Advisory Board on Cosmetology--09/01/2024;

(4) Architectural Barriers Advisory Committee--09/01/2024;

(5) Air Conditioning and Refrigeration Contractors Advisory Board--09/01/2024;

(6) Auctioneer Education Advisory Board--09/01/2024;

(7) Board of Boiler Rules--09/01/2024;

(8) Combative Sports Advisory Board--09/01/2024;

(9) Dietitians Advisory Board--09/01/2024;

(10) Dyslexia Therapists and Practitioners Advisory Committee--09/01/2024;

(11) Electrical Safety and Licensing Advisory Board--09/01/2024;

(12) Elevator Advisory Board--09/01/2024;

(13) Hearing Instrument Fitters and Dispensers Advisory Board--09/01/2024;

(14) Licensed Breeders Advisory Committee--09/01/2024;

(15) Midwives Advisory Board--09/01/2024;

(16) Orthotists and Prosthetists Advisory Board--09/01/2024;

(17) Polygraph Advisory Committee--09/01/2024;

(18) Property Tax Consultants Advisory Council--09/01/2024;

(19) Speech Language Pathologists and Audiologists Advisory Board--09/01/2024;

(20) Texas Tax Professional Advisory Committee--09/01/2024;

(21) Towing, Storage, and Booting Advisory Board--09/01/2024;

(22) Used Automotive Parts Recycling Advisory Board--09/01/2024;

(23) Vehicle Protection Product Warrantor Advisory Board--09/01/2024;

(24) Water Well Drillers Advisory Council--09/01/2024; and

(25) Weather Modification Advisory Committee--09/01/2024.

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, 2016.

TRD-201604623

Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Effective date: October 1, 2016
Proposal publication date: June 3, 2016
For further information, please call: (512) 463-8179

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 62. COMMISSIONER'S RULES CONCERNING THE EQUALIZED WEALTH LEVEL

19 TAC §62.1071

(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 figure in 19 TAC §62.1071 is not included in the print version of the Texas Register. The figure is available in the html version of the September 23, 2014, issue of the Texas Register online.)

The Texas Education Agency (TEA) adopts an amendment to §62.1071, concerning the equalized wealth level. The amendment is adopted with changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4579). The section establishes provisions relating to wealth equalization requirements. The amendment adopts as a part of the Texas Administrative Code (TAC) the *Manual for Districts Subject to Wealth Equalization 2016-2017 School Year.* The manual contains the processes and procedures that the TEA uses in the administration of the provisions of the Texas Education Code (TEC), Chapter 41, and the fiscal, procedural, and administrative requirements that school districts subject to the TEC, Chapter 41, must meet.

REASONED JUSTIFICATION. The TEA has adopted the procedures contained in each yearly manual for districts subject to wealth equalization as part of the TAC since 2011. The earlier version of 19 TAC §62.1071, Administration of Wealth Equalization, adopted effective June 11, 1998, and subsequently amended several times, was repealed effective May 9, 2011, and replaced with the wealth equalization manual to remove outdated and obsolete provisions from rule. The intent is to annually update 19 TAC §62.1071 to refer to the most recently published manual. Manuals adopted for previous school years will remain in effect with respect to those school years.

The amendment to 19 TAC §62.1071, Manual for Districts Subject to Wealth Equalization, adopts in rule the official TEA publication *Manual for Districts Subject to Wealth Equalization 2016-2017 School Year* as Figure: 19 TAC §62.1071(a).

Each school year's manual for districts subject to wealth equalization explains how districts subject to wealth equalization are identified; the fiscal, procedural, and administrative requirements those districts must meet; and the consequences for not meeting requirements. The manual also provides information on using the online Foundation School Program (FSP) System to fulfill certain requirements.

Three significant changes to the *Manual for Districts Subject to Wealth Equalization 2016-2017 School Year* from the *Manual for*

Districts Subject to Wealth Equalization 2015-2016 School Year are as follows.

Election Dates

The Chapter 41 Option 3 and Option 4 election dates have been moved to the District Intent/Choice Selection form in the Chapter 41 subsystem of the online FSP System.

Chapter 41 Intent Letter

The Chapter 41 Intent Letter is no longer mailed to districts. The letter authorizing districts to proceed with adopting a tax rate is located in a link at the bottom of the District Intent/Choice Selection form in the Chapter 41 subsystem of the online FSP System.

Changes to deadlines noted throughout

The language corresponding to passage of Senate Bill (SB) 1, 84th Texas Legislature, 2015, has been removed because transitional provisions from SB 1 expire September 1, 2016, and will not apply to the 2016-2017 school year.

At adoption, changes were made to the manual. The dates included on page 32 under the "First Evaluation" section were updated to align with the dates in the "Chapter 41 Calendar for School Year 2016-2017" on pages 11-15. Although the calendar dates were accurate at proposal, the dates on page 32 were inadvertently not updated to correspond.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began June 24, 2016, and ended July 25, 2016. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §41.006, which authorizes the commissioner of education to adopt rules necessary for the implementation of the TEC, Chapter 41.

CROSS REFERENCE TO STATUTE. The amendment implements the TEC, §41.006.

§62.1071. Manual for Districts Subject to Wealth Equalization.

(a) The processes and procedures that the Texas Education Agency (TEA) uses in the administration of the provisions of the Texas Education Code (TEC), Chapter 41, and the fiscal, procedural, and administrative requirements that school districts subject to the TEC, Chapter 41, must meet are described in the official TEA publication *Manual for Districts Subject to Wealth Equalization 2016-2017 School Year,* provided in this subsection.
Figure: 19 TAC §62.1071(a)

(b) The specific processes, procedures, and requirements used in the manual for districts subject to wealth equalization are established annually by the commissioner of education and communicated to all school districts.

(c) School district actions and inactions in previous school years and data from those school years will continue to be subject to the annual manual for districts subject to wealth equalization with respect to those years.

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, 2016.

TRD-201604624

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: September 22, 2016
Proposal publication date: June 24, 2016
For further information, please call: (512) 475-1497

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CHAPTER 102. EDUCATIONAL PROGRAMS
SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING PILOT PROGRAMS

19 TAC §102.1058

The Texas Education Agency adopts new §102.1058, concerning the reading excellence team pilot program. The new section is adopted without changes to the proposed text as published in the July 29, 2016 issue of the *Texas Register* (41 TexReg 5494) and will not be republished. The adopted new section implements the requirements of the Texas Education Code (TEC), §28.0061, as added by Senate Bill (SB) 935, 84th Texas Legislature, Regular Session, 2015.

REASONED JUSTIFICATION. SB 935, 84th Texas Legislature, Regular Session, 2015, added the TEC, §28.0061, to require the commissioner of education to establish and administer a reading excellence team pilot program. The pilot program establishes reading excellence teams composed of reading instruction specialists who would provide assistance to eligible school districts upon request. A school district is eligible to participate in the reading excellence team pilot program if the district has low student performance, as determined by the commissioner, on required reading diagnosis assessments for kindergarten, Grade 1, and Grade 2 or on the Grade 3 State of Texas Assessments of Academic Readiness (STAAR®) reading assessment.

Adopted new 19 TAC §102.1058, Reading Excellence Team Pilot Program, implements the TEC, §28.0061, by establishing qualifications and criteria for selecting reading instruction specialists for reading excellence teams. It also requires that reading instruction specialists have significant expertise in reading instruction; experience in providing instruction related to the curriculum in 19 TAC Chapter 110, Texas Essential Knowledge and Skills for English Language Arts and Reading; and knowledge of developmentally appropriate and research-based strategies for students. The adopted new rule requires selected education service centers to prioritize school districts and open-enrollment charter schools that apply based on low performance on statutorily defined kindergarten-Grade 3 assessments for receipt of reading excellence teams.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began July 29, 2016, and ended August 29, 2016. No public comments were received.

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code (TEC), §28.0061, as added by Senate Bill 935, 84th Texas Legislature, Regular Session, 2015, which requires the commissioner of education to adopt rules to administer the reading excellence team pilot program, including establishing qualifications and criteria for selecting reading instruction specialists for a reading excellence team; and the TEC, §12.104(d), which authorizes the commissioner to permit

open-enrollment charter schools access to state programs available to school districts if the open-enrollment charter schools comply with the requirements of the programs.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §28.0061, as added by Senate Bill 935, 84th Texas Legislature, Regular Session, 2015, and §12.104(d).

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, 2016.

TRD-201604631
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: September 26, 2016
Proposal publication date: July 29, 2016
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 72. APPLICATIONS AND APPLICANTS

22 TAC §72.6

The Texas Board of Chiropractic Examiners (Board) adopts amendments to Chapter 72, §72.6, concerning Time, Place and Scope of Application, without changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4585). The amended text will not be republished.

The amended rule will assist the Board in serving the public, stakeholders and licensees. The amendment will reflect current examination practices and bring the rule into compliance with statutory guidelines contained within Subchapter G. License Requirements of the Chiropractic Act, and recognize the transition to an online jurisprudence examination.

This rule was proposed for publication at the Board's meeting on May 17, 2016. The proposed language was published on the Rules Committee and the Board agenda. Comment on the proposal was sought during the Rules Committee and the Board meetings prior to this publication in the *Texas Register.*

No comments were received regarding this amendment.

This amended rule is adopted under Texas Occupations Code §201.152, relating to rules and Subchapter G of the Chiropractic Act, License Requirements. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. Subchapter G provides the framework to authorize the Board to grant chiropractic licenses.

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

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, 2016.

TRD-201604681
Courtney Ebeier
General Counsel
Texas Board of Chiropractic Examiners
Effective date: November 1, 2016
Proposal publication date: June 24, 2016
For further information, please call: (512) 305-6715

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CHAPTER 74. CHIROPRACTIC RADIOLOGIC TECHNOLOGISTS

22 TAC §74.1

The Texas Board of Chiropractic Examiners (Board) adopts amendments to Chapter 74, §74.1, concerning Chiropractic Radiologic Technologists, without changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4586). The amended text will not be republished.

This section established requirements and procedures related the rules of chiropractic practice.

The amendment is made as part of the Board's review of Chapter 74 to fulfill its ongoing duty to conduct agency rule review.

This rule was proposed for publication at the Board's meeting on May 17, 2016. The proposed language was published on the Rules Committee and the Board agenda. Comment on the proposal was sought during the Rules Committee and the Board meetings prior to this publication in the Register.

No comments were received regarding this amendment.

This amendment is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

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, 2016.

TRD-201604682
Courtney Ebeier
General Counsel
Texas Board of Chiropractic Examiners
Effective date: November 1, 2016
Proposal publication date: June 24, 2016
For further information, please call: (512) 305-6715

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22 TAC §74.2

The Texas Board of Chiropractic Examiners (Board) adopts amendments to Chapter 74, §74.2, concerning Registration of

Chiropractic Radiologic Technologists, without changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4586) and will not be republished.

This section established requirements and procedures relating to the rules of chiropractic practice.

The amendment is made as part of the Board's review of Chapter 74 to fulfill its ongoing duty to conduct agency rule review.

This rule was proposed for publication at the Board's meeting on May 17, 2016. The proposed language was published on the Rules Committee and the Board agenda. Comment on the proposal was sought during the Rules Committee and the Board meetings prior to this publication in the Register.

No comments were received regarding this amendment.

This amendment is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

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, 2016.

TRD-201604683
Courtney Ebeier
General Counsel
Texas Board of Chiropractic Examiners
Effective date: November 1, 2016
Proposal publication date: June 24, 2016
For further information, please call: (512) 305-6715

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CHAPTER 78. RULES OF PRACTICE

22 TAC §78.6

The Texas Board of Chiropractic Examiners (Board) adopts amended Chapter 78, §78.6, concerning Required Fees and Charges, without changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4588) and will not be republished.

The amendment is made to update the rule to reflect and ratify the Board's current Schedule of Fees regarding its jurisprudence examination and applicants that are being evaluated for licensure. It also acknowledges that a licensee may take a jurisprudence study course and receive 3 hours of CE. Finally, it contains an additional compliance tool for use by the Enforcement Committee.

This rule was proposed for publication at the Board's meeting on May 17, 2016. The proposed language was published on the Rules Committee and the Board agenda. Comment on the proposal was sought during the Rules Committee and the Board meetings prior to this publication in the Register.

No comments were received regarding this amendment.

This amendment is made under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

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, 2016.

TRD-201604684
Courtney Ebeier
General Counsel
Texas Board of Chiropractic Examiners
Effective date: November 1, 2016
Proposal publication date: June 24, 2016
For further information, please call: (512) 305-6715

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PART 9. TEXAS MEDICAL BOARD

CHAPTER 185. PHYSICIAN ASSISTANTS

22 TAC §§185.2, 185.4, 185.6, 185.7

The Texas Medical Board (Board) adopts amendments to §185.2, concerning Definitions, §185.4 concerning Procedural Rules for Licensure Applicants, §185.6, concerning Annual Renewal of License, and §185.7, concerning Temporary License. The amendments are adopted without changes to the proposed text as published in the May 13, 2016, issue of the *Texas Register* (41 TexReg 3419) and will not be republished.

The amendments to §185.2 add definitions for "Active Duty" and "Armed Forces of the United States" and amend definitions for "Military service member", "Military spouse" and "military veteran." These amendments are in accordance with the passage of SB 1307 (84th Regular Session) which amended Chapter 55 of the Texas Occupations Code.

The amendment to §185.4 expands subsection (f), Alternative Licensing Procedure, to include military service members and military veterans. The amendment also includes language allowing the executive director to waive any prerequisite to obtaining a license for an applicant described in the subsection, after reviewing the applicant's credentials. These amendments are in accordance with the passage of SB 1307 (84th Regular Session) which amended Chapter 55 of the Texas Occupations Code.

The amendment to §185.6 adds new subsection (b)(9) providing that a surgical assistant who is a military service member may request an extension of time, not to exceed two years, to complete any continuing education requirements. The amendment also adds new subsection (j) providing that military service members who hold a license to practice in Texas are entitled to two years of additional time to complete any other requirement related to the renewal of the military service member's license. This amendment is in accordance with the passage of SB 1307 (84th Regular Session) which amended Chapter 55 of the Texas Occupations Code.

The amendment to §185.7 changes an incorrect citation, §185.4(d), to the correct citation, §185.4(c)

No comments were received regarding adoption of the rules.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §204.101, which provides authority for the Board to adopt rules and bylaws as necessary to: gov-

ern its own proceedings; perform its duties; enforce this subtitle; and establish rules related to licensure.

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, 2016.

TRD-201604625
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: September 26, 2016
Proposal publication date: May 13, 2016
For further information, please call: (512) 305-7016

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22 TAC §185.8

The Texas Medical Board (Board) adopts an amendment to §185.8, concerning Inactive License, without changes to the proposed text as published in the April 1, 2016, issue of the *Texas Register* (41 TexReg 2385). The amended text will not be republished.

The amendment adds new language in subsection (d) providing that a licensee attempting to return from inactive to active status must complete a fingerprint card and return the card to the board as part of the application, as well as submitting, or having submitted on the applicant's behalf, a report from the National Practitioner Data Bank/Health Integrity and Protection Data Bank (NPDB-HIPDB).

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §204.101, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; enforce this subtitle; and establish rules related to licensure.

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, 2016.

TRD-201604626
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: September 26, 2016
Proposal publication date: April 1, 2016
For further information, please call: (512) 305-7016

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CHAPTER 199. PUBLIC INFORMATION

22 TAC §199.6

The Texas Medical Board (Board) adopts new §199.6, concerning Enhanced Contract or Performance Monitoring, without changes to the proposed text as published in the July 1, 2016, issue of the *Texas Register* (41 TexReg 4767). The new rule will not be republished.

New §199.6 delineates the criteria and requirements for the agency's identification of and monitoring of certain contracts. This new section is added in accordance with the passage of SB 20 (85th Regular Session) which amended Chapter 2261 of the Texas Government Code.

No comments were received regarding adoption of the rule.

The new section is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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, 2016.

TRD-201604627
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: September 26, 2016
Proposal publication date: July 1, 2016
For further information, please call: (512) 305-7016

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CHAPTER 200. STANDARDS FOR PHYSICIANS PRACTICING COMPLEMENTARY AND ALTERNATIVE MEDICINE

22 TAC §200.3

The Texas Medical Board (Board) adopts an amendment to §200.3, concerning Practice Guidelines for the Provision of Complementary and Alternative Medicine, without changes to the proposed text as published in the July 1, 2016, issue of the *Texas Register* (41 TexReg 4767) and will not be republished.

The amendment corrects an incorrect reference to the "board of medical examiners."

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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, 2016.

TRD-201604628

Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: September 26, 2016
Proposal publication date: July 1, 2016
For further information, please call: (512) 305-7016

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.10

The Texas State Board of Examiners of Psychologists adopts an amendment to §463.10, concerning Provisionally Licensed Psychologists, without changes to the proposed text as published in the July 1, 2016, issue of the *Texas Register* (41 TexReg 4769). The amended rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted is necessary due to unforeseen limitations with the Board's shared database system. More specifically, the Board's database system will not allow licensing staff to place the transcript requirement at issue in this rule change, in the initial application module for some applicants and the approved application module for others. The transcript requirement must appear in the same application module for all applicants, otherwise staff will be unable to track the 90 day deadline required by Board rule §463.2.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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, 2016.

TRD-201604636
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: September 26, 2016
Proposal publication date: July 1, 2016
For further information, please call: (512) 305-7700

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CHAPTER 465. RULES OF PRACTICE

22 TAC §465.2

The Texas State Board of Examiners of Psychologists adopts amendment to §465.2, concerning Supervision, without changes to the proposed text as published in the July 1, 2016, issue of the *Texas Register* (41 TexReg 4770). The amended text will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted will ensure that the Board's standards for the supervision of LSSP interns and trainees comport with both federal law and nationally recognized standards of practice as required by Tex. Occ. Code Ann. §501.260(c).

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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, 2016.

TRD-201604637
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: September 26, 2016
Proposal publication date: July 1, 2016
For further information, please call: (512) 305-7700

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22 TAC §465.11

The Texas State Board of Examiners of Psychologists adopts amendment to §465.11, concerning Informed Consent/Describing Psychological Services, with changes to the proposed text as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4946). The amended text will be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted will clarify the duty to obtain informed consent in an inpatient setting, and reduce the regulatory burden by eliminating any requirement for duplicative informed consent when a patient has already given a general consent. The adopted change will also reduce confusion by referencing the rule governing informed consent in the public schools.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§465.11. Informed Consent/Describing Psychological Services.

(a) Except in an inpatient setting where a general consent has been signed, licensees must obtain and document in writing informed

consent concerning all services they intend to provide to the patient, client or other recipient(s) of the psychological services prior to initiating the services, using language that is reasonably understandable to the recipients unless consent is precluded by applicable federal or state law.

(b) Licensees provide appropriate information as needed during the course of the services about changes in the nature of the services to the patient client or other recipient(s) of the services using language that is reasonably understandable to the recipient to ensure informed consent.

(c) Licensees provide appropriate information as needed, during the course of the services to the patient client and other recipient(s) and afterward if requested, to explain the results and conclusions reached concerning the services using language that is reasonably understandable to the recipient(s).

(d) When a licensee agrees to provide services to a person, group or organization at the request of a third party, the licensee clarifies to all of the parties the nature of the relationship between the licensee and each party at the outset of the service and at any time during the services that the circumstances change. This clarification includes the role of the licensee with each party, the probable uses of the services and the results of the services, and all potential limits to the confidentiality between the recipient(s) of the services and the licensee.

(e) When a licensee agrees to provide services to several persons who have a relationship, such as spouses, couples, parents and children, or in group therapy, the licensee clarifies at the outset the professional relationship between the licensee and each of the individuals involved, including the probable use of the services and information obtained, confidentiality, expectations of each participant, and the access of each participant to records generated in the course of the services.

(f) At any time that a licensee knows or should know that he or she may be called on to perform potentially conflicting roles (such as marital counselor to husband and wife, and then witness for one party in a divorce proceeding), the licensee explains the potential conflict to all affected parties and adjusts or withdraws from all professional services in accordance with Board rules and applicable state and federal law. Further, licensees who encounter personal problems or conflicts as described in Board rule §465.9(i) of this title (relating to Competency) that will prevent them from performing their work-related activities in a competent and timely manner must inform their clients of the personal problem or conflict and discuss appropriate termination and/or referral to insure that the services are completed in a timely manner.

(g) When persons are legally incapable of giving informed consent, licensees obtain informed consent from any individual legally designated to provide substitute consent.

(h) When informed consent is precluded by law, the licensee describes the nature and purpose of all services, as well as the confidentiality of the services and all applicable limits thereto, that he or she intends to provide to the patient, client, or other recipient(s) of the psychological services prior to initiating the services using language that is reasonably understandable to the recipient(s).

(i) Informed consent for school psychological services is governed by Board rule §465.38.

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, 2016.

TRD-201604638
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: September 26, 2016
Proposal publication date: July 8, 2016
For further information, please call: (512) 305-7700

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. MISCELLANEOUS PROVISIONS SUBCHAPTER D. STATE EMPLOYEE HEALTH FITNESS AND EDUCATION PROGRAMS

25 TAC §1.61

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts the repeal of §1.61, concerning the Worksite Wellness Advisory Board as published in the May 20, 2016 issue of the *Texas Register* (41 TexReg 3615) without changes to the proposed text and, therefore, the section will not be republished.

BACKGROUND AND PURPOSE

The purpose of the repeal is to implement Government Code, Chapter 664, amended by Senate Bill (SB) 277, 84th Legislature, Regular Session, 2015, which abolished the board.

The board was created by the Legislature in 2007 to advise the department, executive commissioner, and statewide wellness coordinator on worksite wellness issues, including funding and resource development for worksite wellness programs; identifying food service vendors that successfully market healthy foods; best practices for worksite wellness used by the private sector; and worksite wellness features and architecture for new state buildings based on features and architecture used by the private sector.

The board was one of several advisory committees recommended for abolishment by the Sunset Advisory Commission in 2014. Subsequent to the repeal of the statutory requirements for this and other committees, the commission conducted a comprehensive analysis and sought stakeholder input on the continuation of the advisory committees abolished in statute to determine if there was a need to recreate any of the committees in rule. No comments were received regarding the discontinuation of the board. The department will continue to obtain input on worksite wellness issues through ongoing interactions with staff of state agencies and stakeholder groups.

SECTION-BY-SECTION SUMMARY

Section 1.61 is being repealed because this rule is no longer necessary. SB 277 amended Government Code, Chapter 664, by abolishing the board.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rule during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Lisa Hernandez, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The repeal is authorized by Government Code, Chapter 664, which has been amended to remove reference to rules concerning the Worksite Wellness Advisory Board; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of 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 7, 2016.

TRD-201604671
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: September 27, 2016
Proposal publication date: May 20, 2016
For further information, please call: (512) 776-6972

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CHAPTER 102. DISTRIBUTION OF TOBACCO SETTLEMENT PROCEEDS TO POLITICAL SUBDIVISIONS

25 TAC §102.3

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts an amendment to §102.3, concerning the distribution of tobacco settlement proceeds to political subdivisions without changes to the proposed text as published in the June 17, 2016 issue of the *Texas Register* (41 TexReg 4381) and, therefore, the rule will not be republished.

BACKGROUND AND PURPOSE

The rule amendments provide updated language and offer clarification to enhance the understanding of the program rules for the distribution of tobacco settlement proceeds to political subdivisions. The rules are still needed due to the continued responsibilities for implementing the Health and Safety Code, §§12.131 - 12.139, and the responsibilities of the department under the "Agreement Regarding Disposition of Tobacco Settlement Proceeds" filed on July 24, 1998, in United States District Court, Eastern District of Texas, in the case styled *The State of Texas v. The American Tobacco Co.,* et al., No. 5-96CV-91.

Government Code, §2001.039, requires each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 102.1 - 102.5 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

Section 102.3(b)(2) was amended to give political subdivisions additional examples of expenditures that may not be counted as unreimbursed health care expenditures. Political subdivisions have frequently contacted the department regarding the proposed additional examples.

The amendment to §102.3(b)(2)(B) adds "printers and copiers" as additional examples of administrative equipment not directly related to the provision of health care services to the general public.

The amendment to §102.3(b)(2)(D) adds "rabies control" as an additional example of environmental services that may not be counted.

The amendment to §102.3(b)(2)(F) adds "time spent transporting inmates" as an example of a court procedure that may not be counted.

In §102.3(b)(2)(J), the word "and" was moved to the end of new subparagraph (L) because the list of examples was expanded.

The amendment to §102.3(b)(2)(K) adds "autopsies, burials, and mortician services" as new items not directly related to the provision of health care services to the general public.

The amendment to §102.3(b)(2)(L) adds "meal donation programs" as a new item not directly related to the provision of health care services to the general public.

In §102.3(b)(2), subparagraph (K) was amended to subparagraph (M) to accommodate new subparagraphs (K) and (L).

Section 102.3(f)(1) was amended to give political subdivisions consistent deadlines for submitting annual expenditure statements to the department.

The amendment to §102.3(f)(1)(A) changes the deadline for submitting annual expenditure statements by delivery, fax, or electronic mail from 5:00 p.m. to 11:59 p.m. on March 31 to accommodate electronic delivery of expenditure statements after regular business hours.

The amendment to §102.3(f)(1)(B) changes the deadline for postmarks of annual expenditure statements submitted by U.S. Postal Service or commercial mail carrier from midnight to 11:59 p.m. on March 31 to conform with the proposed new deadline in §102.3(f)(1)(A).

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period. There were no changes to the proposed text of the rule amendments.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendments are authorized under Health and Safety Code, §12.133, which requires the department to adopt rules governing the collection of information that relates to the political subdivisions' unreimbursed health care expenditures; and Government Code, §531.0055, and Health and Safety Code, §1001.75, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

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, 2016.

TRD-201604686
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: September 27, 2016
Proposal publication date: June 17, 2016
For further information, please call: (512) 776-6972

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 30. OCCUPATIONAL LICENSES AND REGISTRATIONS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§30.3, 30.7, 30.10, 30.18, 30.20, 30.24, 30.26, 30.30, 30.81, 30.117, 30.120, 30.122, 30.231, 30.240, 30.279, 30.307, 30.331, 30.340, 30.390, 30.506, and 30.507; repeals §30.247; and repeals and simultaneously adopts new §30.28.

The amendment to §30.7 is adopted *with change* to the proposed text as published in the April 22, 2016, issue of the *Texas Register* (41 TexReg 2827) and will be republished. Sections 30.3, 30.10, 30.18, 30.20, 30.24, 30.26, 30.28, 30.30, 30.81, 30.117, 30.120, 30.122, 30.231, 30.240, 30.279, 30.307, 30.331, 30.340, 30.390, 30.506, and 30.507; and the repeals of §30.28 and §30.247 are adopted *without changes* and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

This adopted rulemaking implement requirements in Senate Bills (SB) 807 and 1307 from the 84th Texas Legislature, 2015. These bills impact Chapter 30, Subchapter A, Administration of Occupational Licenses and Registrations.

The adopted rules enable the commission to: waive licensing and examination fees for military service members, military veterans, or military spouses, as required by Texas Occupations Code, Chapter 55, as amended by SB 807; and extend renewal deadlines for military service as required by Texas Occupations Code, Chapter 55, amended by SB 1307.

Additionally, the adopted rules: remove redundant citations; identify approved training delivery methods; increase examination security; add relevant statutory citations; remove historical dates which no longer pertain to occupational licenses due to agency rule changes; remove citations which no longer pertain to occupational licenses due to historical legislative statutory changes; and improve readability of rules by removing redundant wording and making non-substantive changes to grammar, punctuation, and organization.

The adopted rules also repeal and simultaneously adopt new §30.28 to reorganize the section to improve readability by the public. Adopted new §30.28 will generalize training provider requirements to apply to all delivery methods.

Section by Section Discussion

In addition to the adopted amendments associated with this rulemaking, various stylistic, non-substantive changes have been made to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally not specifically discussed in this preamble.

§30.3, Purpose and Applicability

The adopted amendment to §30.3, updates subsection (b)(11) to match the title of Chapter 30, Subchapter L, Visible Emissions Evaluator Training and Certification.

§30.7, Definitions

The adopted amendment to §30.7, reorders definitions for alphabetical correctness. The adopted amendment adds a definition for *approved application* and *association.* The adopted rule clarifies training delivery methods and providers and identifies entities that may be approved for differing delivery methods. The adopted amendment adds or modifies definitions to clarify what the commission considers a *high school diploma* and *home school diploma.* The adopted amendment also updates additional definitions in the section to improve understanding.

Based on a comment received, the definition for *association* in adopted §30.7(8) is amended to include all nonprofit trade associations whose members are required to employ or contract with individuals who hold licenses issued by the commission.

§30.10, Administration

The adopted amendment to §30.10, clarifies the responsibilities of the executive director by including changes made in §30.7, Definitions.

§30.18, Applications for an Initial License

The adopted amendment to §30.18, adds language to allow the executive director discretion when considering an applicant's diploma from a non-accredited high school.

§30.20, Examinations

The adopted amendment to §30.20, includes language about the role and responsibility of examination proctors and examinees. The adopted rule also includes language for increased examination security requirements and provides details regarding the consequences for violation of exam security requirements.

§30.24, License and Registration Applications for Renewal

The adopted amendment to §30.24, clarifies language for renewal notification responsibilities. The adopted rule includes language from §30.7, Definitions. The adopted rule incorporates language from SB 1307 for the extended renewal time for military service members.

§30.26, Recognition of Licenses from Out-of-State; Licenses for Military Service Members, Military Veterans, or Military Spouses

The adopted amendment to §30.26, changes the section title to reflect changes made by SB 1307. The adopted rule incorporates language from SB 1307 for the qualifications of military service members, military veterans, and military spouses. The adopted rule adds language clarifying the limitations of reciprocity.

§30.28, Approval of Training

The adopted rulemaking repeals and simultaneously adopts new §30.28, to reorganize the section to improve readability and flow. The preexisting rule did not allow for incorporation of emerging technologies to deliver training. The new rule generalizes training provider requirements so the requirements apply to all delivery methods.

Adopted new §30.28(a), former §30.28(a), removes the 45-and 120-day application review notification deadlines from the former rule and place them into internal guidance. The removal of the review notification deadlines from rule will not affect the commission's response times on these reviews and will continue to ensure staff can review training applications completely and accurately.

Adopted new §30.28(b) identifies specific training delivery methods approved by the executive director. The adopted subsection incorporates the training methods in former §30.28(b).

Adopted new §30.28(c), part of former §30.28(b), allows the executive director to award training credit for successful completion of approved training used to obtain or renew a license.

Adopted new §30.28(d), former §30.28(c), allows the executive director to determine the number of hours of training credit for approval. The adopted subsection clarifies the methodology used to determine hours from the former section.

Adopted new §30.28(e), former §30.28(d), identifies the requirements for training provider applications. The adopted subsection improves the readability of the previous language. Adopted §30.28(e)(6) also specifies documentation required for copyrighted material as listed in former §30.28(v). Adopted §30.28(e)(7) additionally includes the application deadline from former §30.28(y).

Adopted new §30.28(f) adds the executive director's definition of applicant.

Adopted new §30.28(g), former Figure: 30 TAC §30.28(y)(6), identifies the fee schedule calculations for training applications.

Adopted new §30.28(h), former §30.28(l), identifies the requirements training providers must meet to be approved or renewed. The adopted subsection makes no substantive changes to the former language.

Adopted new §30.28(i), former §30.28(j), requires that training not be advertised as approved until a notice of approval is received from the executive director. The adopted subsection makes no substantive changes to the former language.

Adopted new §30.28(j), former §30.28(m)(1), prohibits training in a place of business directly related to the occupational license. The adopted subsection makes no substantive change to the former language.

Adopted new §30.28(k), former §30.28(e), allows approved training to be offered without notification to the executive director. The adopted subsection makes no substantive changes to the former language.

Adopted new §30.28(l), former §30.28(f), allows training to be considered approved until the content changes or the executive director notifies the training provider of required changes. The adopted subsection makes no substantive change to the former language.

Adopted new §30.28(m), former §30.28(g), requires the executive director's approval when training providers change delivery methods. The adopted subsection makes no substantive changes to the former language.

Adopted new §30.28(n), former §30.28(x), identifies the executive director's authority over training providers. The adopted subsection makes no substantive change to the former language. The adopted §30.28(n)(2) includes language from former §30.28(y)(3) that grants the executive director authority to conduct an administrative review over applications and a technical review for rule compliance. The adopted §30.28(n)(4) includes the update requirement from former §30.28(h).

Adopted new §30.28(o), former §30.28(x)(3), identifies the reasons the executive director may recall, rescind, suspend, or deny approval for training. The adopted subsection makes no substantive changes to the former language.

Adopted new §30.28(p) identifies the types of training that will not be approved or allowed credit.

Adopted new §30.28(q), former §30.28(i) and (q), identifies the obligations training providers have to the agency and to the students. The adopted subsection includes a requirement to ensure the agency has the most current electronic copy of a provider's training materials.

Adopted new §30.28(r), former §30.28(t), requires that training material be presented in the original manner and be relevant to the critical job tasks for the occupational license. The adopted subsection makes no substantive changes to the former language.

Adopted new §30.28(s), former §30.28(u), requires training providers utilizing public information modify the material to be applicable to the target audience and delivery methods. The adopted subsection makes no substantive changes to the former language.

§30.30, Terms and Fees for Licenses and Registration

The adopted amendment to §30.30 incorporates language from SB 807 to waive the initial application fee for military service members, military veterans, and military spouses.

§30.81, Purpose and Applicability

The adopted amendment to §30.81 removes citations which no longer pertain to occupational licenses due to historical legislative statutory changes.

Subchapter D: Landscape Irrigators, Irrigation Technicians, and Irrigation Inspectors

The adopted amendment changes the title of Subchapter D to reflect historical rule changes.

§30.117, Definitions

The adopted amendment to §30.117 removes and modifies historical definitions that pertain to occupational licenses due to agency rule changes.

§30.120, Qualifications for Initial License

The adopted amendment to §30.120 removes historical terms which no longer pertain to occupational licenses due to agency rule changes.

§30.122, Qualifications for License Renewal

The adopted amendment to §30.122 removes historical terms which no longer pertain to occupational licenses due to agency rule changes.

§30.231, Purpose and Applicability

The adopt amendment to §30.231 removes historical terms which no longer pertain to occupational licenses and registrations due to agency rule changes.

§30.240, Qualifications for Initial License

The adopted amendment to §30.240 removes historical terms and dates which no longer pertain to occupational licenses due to agency rule changes.

§30.247, Registration of Maintenance Providers

The adopted repeal of §30.247 repeals a historical rule that was valid from September 11, 2008, to April 30, 2009, due to legislative changes from House Bill 2482, 80th Texas Legislature, 2007.

§30.279, Exemptions

The adopted amendment to §30.279 removes and modifies citations which pertain to occupational licenses and registrations due to historical legislative statutory changes.

§30.307, Definitions

The adopted amendment to §30.307 removes and modifies citations which pertain to occupational licenses and registrations due to historical legislative statutory changes.

§30.331, Purpose and Applicability

The adopted amendment to §30.331 adds a new citation that resulted from a recent applicable rule change. The adopted section also removes historical dates which no longer pertain to occupational licenses and registrations due to agency rule changes.

§30.340, Qualifications for Initial License

The adopted amendment to §30.340 clarifies that an examination is required to receive the license. The adopted amendment makes references to college degrees consistent with other rules. The adopted amendment removes historical dates which no longer pertain to occupational licenses due to agency rule changes. The adopted amendment clarifies the amount of education and training that may be substituted for the required experience. The adopted amendment clarifies the courses required for licensure.

§30.390, Qualifications for Initial License

The adopted amendment to §30.390 clarifies that an examination is required to receive the license. The adopted rule clarifies the course and hours required for licensure. The adopted rule makes references to college degrees consistent with other rules. The adopted rule clarifies the experience requirements for licensure. The adopted rule clarifies the amount of education and training that may be substituted for the required experience.

§30.506, Visible Emission Evaluator Training Requirements

The adopted amendment to §30.506 adds a requirement for the number of proctors per student. This requirement was originally in §30.507 and moved to §30.506 to clarify that the requirement applies to training providers.

§30.507, Field Training and Testing Requirements

The adopted amendment to §30.507 removes a proctor requirement that is better suited to §30.506. The adopted amendment also updates a requirement to the field testing certification to be consistent with other certification requirements found in rule.

Final Regulatory Impact Determination

The commission reviewed this rulemaking action in light of the regulatory analysis requirements of the Administrative Procedure Act, Texas Government Code, §2001.001 *et seq,* and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3). Texas Government Code, §2001.0225, applies only to rules that are specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the adopted rulemaking is to implement requirements in SBs 807 and 1307 from the 84th Texas Legislature, 2015. Protection of human health and the environment may be a by-product of the adopted rules, but it is not the specific intent of this rulemaking. Furthermore, the adopted rulemaking will enable the commission to: extend renewal deadlines for military service as required by Texas Occupations Code, Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses, amended by SB 1307; and waive licensing and examination fees for military service members, military veterans, or military spouses, as required by Texas Occupations Code, Chapter 55, as amended by SB 807. This rulemaking will not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Thus, the adopted rulemaking does not meet the definition of a "major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3) and does not require a full regulatory impact analysis.

Furthermore, the adopted rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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) is adopted solely

under the general powers of the agency instead of under a specific state law.

There are no federal standards regulating occupational licensing. This rulemaking does not exceed state law requirements, and state law authorizes their implementation, not federal law. There are no delegation agreements or contracts between the State of Texas and an agency or representative of the federal government to implement a state and federal program regarding occupational licensing. Finally, this rulemaking is being adopted under specific state laws, in addition to the general powers of the agency.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination during the public comment period.

Takings Impact Assessment

The commission evaluated this adopted rulemaking and performed an analysis of whether this adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The purpose of this adopted rulemaking is to implement requirements in SBs 807 and 1307 from the 84th Texas Legislature, 2015. Promulgation and enforcement of this adopted rulemaking would be neither a statutory nor a 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 nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. This rulemaking does not constitute a statutory or constitutional taking because this adopted rulemaking only implements statutory requirements and updates and clarifies the former rules and does not affect a landowner's rights in real property.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor does the rulemaking affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rulemaking is 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 consistency with the CMP during the public comment period.

Public Comment

The commission held a public hearing on May 17, 2016. The comment period closed on May 23, 2016. The commission did not receive comments at the public hearing. The commission received written comments from the Texas Rural Water Association (TRWA).

Response to Comments

Comment

TRWA requested the definition of "association" in §30.7(8) be amended to broaden the term's applicability to cover all nonprofit trade associations representing retail public utilities. TRWA suggested the definition should include "or whose members are retail public utilities that are required to employ or contract with individuals who hold licenses issued by the commission."

Response

The commission agrees with the comment and has made changes to the definition. The commission is not trying to exclude any currently recognized association, but rather the commission is trying to allow associations whose members might not hold commission issued licenses themselves but who are required to employ or contract with licensed individuals to be training providers.

Comment

TRWA supports the changes for the military fee waiver in §30.30(c) and recommends the commission streamline the process.

Response

After SB 807 passed, a waiver process was developed to incorporate the statutory requirements for military fee waivers. No changes were made in response to this comment.

SUBCHAPTER A. ADMINISTRATION OF OCCUPATIONAL LICENSES AND REGISTRATIONS

30 TAC §§30.3, 30.7, 30.10, 30.18, 30.20, 30.24, 30.26, 30.28, 30.30

Statutory Authority

These amendments and new section are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. These amendments and new section are also adopted under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37, and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC, §§341.033, 341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs

necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37, and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; and TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37. These amendments and the new section are also adopted under Texas Occupations Code, §55.001, which establishes the definitions of active duty, armed forces of the United States, license, military service member, military spouse, military veteran, and state agency; Texas Occupations Code, §55.002, which requires the commission to adopt rules to exempt an individual who holds a license issued by the commission from any increased fee or other penalty for failing to renew the license in a timely manner if the individual establishes that the individual failed to renew the license in a timely manner because the individual was serving as a military service member; Texas Occupations Code, §55.003, which requires the commission to extend for two years license renewal deadlines for military service members who hold a license; Texas Occupations Code, §55.004, which requires the commission to adopt alternative licensing rules for military service members, military veterans, or military spouses who hold a license issued by another jurisdiction that has substantially equivalent requirements for the license in this state; Texas Occupations Code, §55.005, which requires the commission to provide an expedited license procedure for military service members, military veterans, and military spouses; Texas Occupations Code, §55.006, which requires the commission to provide expedited license renewal to military service members, military veterans, or military spouses; Texas Occupations Code, §55.008, which requires the commission to credit verified military service, training, or education that is relevant to the occupation toward apprenticeship requirements for a license if an apprenticeship is required; and Texas Occupations Code, §55.009, which requires the commission to waive license application and examination fees for certain military service members, military veterans, and military spouses and to prominently post a notice on the home page of the commission's website describing the provisions of Texas Occupations Code, Chapter 55, that are available to military service members, military veterans, and military spouses.

These amendments and new section implement TWC, §§5.013, 5.102, 5.103, and 37.001 - 37.015; Texas Occupations Code, §§55.001 - 55.006, 55.008, and 55.009; and Senate Bills 807 and 1307.

§30.7. Definitions.

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

(1) Aerobic treatment system owner--Persons that in their individual capacities own a single-family dwelling that is serviced by an on-site sewage disposal system using aerobic treatment.

(2) Approved application--An application submitted to the Occupational Licensing Section that contains all the information the executive director has deemed necessary to be accurately processed and that the executive director has determined to be approved.

(3) Approved classroom training providers--Entities that have been approved by the executive director to provide classroom training after demonstration of hands-on subject matter expertise, knowledge of and experience with educational principles, and effective instructional designs.

(4) Approved conference and webinar training providers--Governmental entities or their designated agents, associations, or colleges as listed by accrediting agencies that are recognized by the United States Department of Education and that have been approved by the executive director to provide conference and webinar training.

(5) Approved distance training providers--Governmental entities or their designated agents, associations, or colleges as listed by accrediting agencies that are recognized by the United States Department of Education and that have been approved by the executive director to provide distance training after demonstrating comparable subject matter expertise, knowledge of and experience with educational principles, and effective instructional designs.

(6) Approved training--Training which provides the knowledge and skills necessary to perform occupational job tasks and is used for obtaining or renewing a license as determined by the executive director.

(7) Approved training delivery method--Methods approved by the executive director that currently include instructor-led classroom training, conferences, seminars, workshops, training at association meetings, distance training, or technology-based training.

(8) Association--The term association as used in the context of this chapter is an industry-related non-profit association whose members hold licenses issued by the commission or whose members are required to employ or contract with individuals who hold licenses issued by the commission.

(9) Conference--The term conference as used in the context of this chapter includes conferences, seminars, workshops, symposiums, expos, and any other such training venues.

(10) Continuing education--Job-related training credit approved by the executive director used for renewal of licenses.

(11) Correspondence training--The term correspondence training as used in the context of this chapter is distance training that can either be paper-based and conducted through a postal system, electronic-based and conducted through a website, or a blend of these delivery systems.

(12) Distance training--The acquisition of knowledge that occurs through various technologies with a separation of place and/or time between the instructor(s) or learning resources and the learner.

(13) Distributor--Any person or nongovernmental organization that sells a product primarily to individuals maintaining occupational licenses administered by the agency.

(14) High school diploma--An earned high school diploma from a United States high school, an accredited secondary school equivalent to that of United States high school, or a passing score on the general education development (GED) test that indicates a high school graduation level.

(15) Home school diploma--An earned diploma from a student who predominately receives instruction in a general elementary or secondary education program that is provided by the parent, or by a person in parental authority, in or through the child's home.

(16) License--An occupational license issued by the commission to a person authorizing the person to engage in an activity covered by this chapter.

(17) Maintenance provider--A person that, for compensation, provides service or maintenance for one or more on-site sewage disposal systems using aerobic treatment.

(18) Manufacturer--For the purpose of this subchapter any person, company, or nongovernmental organization that produces a product for sale primarily to individuals who maintain occupational licenses that are administered by the agency.

(19) Person--As defined in §3.2 of this title (relating to Definitions).

(20) Qualified instructor--An individual who has instructional experience, work-related experience, and subject matter expertise that enables the individual to communicate course information in a relevant, informed manner and to answer students' questions.

(21) Registration--An occupational registration issued by the commission to a person authorizing the person to engage in an activity covered by this chapter.

(22) Service provider--Any person, company, or nongovernmental organization that provides a service for its own profit to individuals who maintain occupational licenses that are administered by the agency.

(23) Subject matter expert--A person having a minimum of three years of work-related experience and expert knowledge in a particular content area or areas as relates to training.

(24) Technology-based training--The term technology-based training as used in the context of this chapter includes training offered through computer equipment or through a website (also known as on-line training or e-learning).

(25) Training credit--Hours awarded by the executive director for successful completion of approved training.

(26) Training provider--An administrative entity or individual responsible for obtaining approval of training, providing acceptable delivery of approved training, ensuring that qualified instructors or subject matter experts are utilized in the delivery, support, and development of training and monitoring, recording and reporting attendance accurately and promptly as required by the executive director.

(27) Webinar--Interactive training delivered live via the Internet as a combination of conference training and distance training where the learner is separated by place from the learning source.

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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30 TAC §30.28

Statutory Authority

This repeal is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. This repeal is also adopted under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37, and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC, §§341.033, 341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37, and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC,

Chapter 37; and TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37.

This repeal implements TWC, §§5.013, 5.102, 5.103, and 37.001 - 37.015.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. CUSTOMER SERVICE INSPECTORS

30 TAC §30.81

Statutory Authority

This amendment is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. This amendment is also adopted under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37, and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC, §§341.033, 341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37, and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37; and THSC, §341.034, which requires persons who perform duties relating to public water supplies to hold a license or registration issued by the commission under TWC, Chapter 37.

This amendment implements TWC, §§5.013, 5.102, 5.103, and 37.001 - 37.015; and THSC, §341.034.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. LANDSCAPE IRRIGATORS, IRRIGATION TECHNICIANS, AND IRRIGATION INSPECTORS

30 TAC §§30.117, 30.120, 30.122

Statutory Authority

These amendments are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. These amendments also adopted under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish

classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37, and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC, §§341.033, 341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37, and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37; Texas Occupations Code, §1903.053, which requires the commission to adopt by rule and enforce standards governing the responsibilities of licensed irrigators; and Texas Occupations Code, §1903.251, which requires a person to hold a license issued by the commission under TWC, Chapter 37, if the person engages in certain activities related to landscape irrigation.

These amendments implement TWC, §§5.013, 5.102, 5.103, and 37.001 - 37.015; and Texas Occupations Code, §1903.053 and §1903.251.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. ON-SITE SEWAGE FACILITIES INSTALLERS, APPRENTICES, DESIGNATED REPRESENTATIVES, MAINTENANCE PROVIDERS, MAINTENANCE TECHNICIANS, AND SITE EVALUATORS

30 TAC §30.231, §30.240

Statutory Authority

These amendments are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. These amendments are also adopted under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37, and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC, §§341.033, 341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37, and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a person to provide information about other occupational

licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; and TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37. These amendments are adopted under THSC, §366.011, which establishes that the commission has general authority over the location, design, construction, installation, and proper functioning of on-site sewage disposal systems; and THSC, §366.012, which authorizes the commission to adopt rules governing the installation of on-site sewage disposal systems.

These amendments implement TWC, §§5.013, 5.102, 5.103, and 37.001 - 37.015; and THSC, §366.011 and §366.012.

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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30 TAC §30.247

Statutory Authority

This repeal is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. This repeal is also adopted under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37, and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC, §§341.033, 341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37, and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; and TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37. This repeal is also adopted under THSC, §366.011, which establishes that the commission has general authority over the location, design, construction, installation, and proper functioning of on-site sewage disposal systems; and THSC, §366.012, which authorizes the commission to adopt rules governing the installation of on-site sewage disposal systems.

This repeal implements TWC, §§5.013, 5.102, 5.103, and 37.001 - 37.015; and THSC, §366.011 and §366.012.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. WATER TREATMENT SPECIALISTS

30 TAC §30.279

Statutory Authority

This amendment is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the com-

mission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. This amendment is also adopted under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37, and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC, §§341.033, 341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37, and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; and TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37. This amendment is adopted under Texas Occupations Code, §1904.051, which requires the commission to establish a program to certify persons qualified to install, exchange, service, and repair residential, commercial, or industrial water treatment equipment and appliances; Texas Occupations Code, §1904.052, which requires a person to obtain a certificate from the commission before engaging in water treatment; Texas Occupations Code, §1904.053, which establishes that the commission is authorized to take applications for certification into the water treatment specialist program; and Texas Occupations Code, §1904.054, which authorizes the commission to issue certificates stating that a person is qualified to install, exchange, service, and repair residential, commercial, or industrial water treatment facilities.

This amendment implements TWC, §§5.013, 5.102, 5.103, and 37.001 - 37.015; and Texas Occupations Code, §§1904.051 - 1904.054.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER I. UNDERGROUND STORAGE TANK ON-SITE SUPERVISOR LICENSING AND CONTRACTOR REGISTRATION

30 TAC §30.307

Statutory Authority

This amendment is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. This amendment is also adopted under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37, and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC, §§341.033, 341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license;

TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37, and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37; TWC, §26.345, which requires the commission to administer TWC, Chapter 26, Subchapter I, concerning Underground and Aboveground Storage Tanks; TWC, §26.364, which authorizes the commission to implement a program under TWC, Chapter 37, to register persons who contract to perform corrective action under TWC, Chapter 26, Subchapter I; TWC, §26.365, which authorizes the commission to register geoscientists into the corrective action program; and TWC, §26.366, which authorizes the commission to implement a program to license persons who supervise a corrective action under TWC, Chapter 26, Subchapter I.

This amendment implements TWC, §§5.013, 5.102, 5.103, 26.345, 26.364 - 26.366, and 37.001 - 37.015.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER J. WASTEWATER OPERATORS AND OPERATIONS COMPANIES

30 TAC §30.331, §30.340

Statutory Authority

These amendments are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. These amendments are also adopted under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37, and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC, §§341.033, 341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37, and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; and TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37. These amendments are also adopted under TWC, §26.0301, which authorizes the commission to issue licenses and registrations for wastewater treatment plant operators and sewage treatment or collection facility services under contract.

These amendments implement TWC, §§5.013, 5.102, 5.103, 26.0301, and 37.001 - 37.015.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER K. PUBLIC WATER SYSTEM OPERATORS AND OPERATIONS COMPANIES

30 TAC §30.390

Statutory Authority

This amendment is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. This amendment is also adopted under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37, and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC, §§341.033, 341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37, and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; and TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37. This amendment is also adopted under THSC, §341.033, which requires persons who furnish drinking water to the public for a charge to hold a license issued by the commission under TWC, Chapter 37; and THSC, §341.034, which requires persons who operate a public water supply on a contract basis to hold a registration issued by the commission under TWC, Chapter 37.

This amendment implements TWC, §§5.013, 5.102, 5.103, and 37.001 - 37.015; and THSC, §341.033 and §341.034.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER L. VISIBLE EMISSIONS EVALUATOR TRAINING AND CERTIFICATION

30 TAC §30.506, §30.507

Statutory Authority

These amendments are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. These amendments are also adopted under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37, and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC, §§341.033, 341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the

commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37, and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; and TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37.

These amendments implement TWC, §§5.013, 5.102, 5.103 and 37.001 - 37.015.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 1. CHRONIC WASTING DISEASE (CWD)

In a duly noticed meeting on August 25, 2016, the Texas Parks and Wildlife Commission adopted the repeal of §65.83 and §65.88, amendments to §§65.80 - 65.82, 65.84, 65.85, and new §65.88 and §65.89, concerning Chronic Wasting Disease. Section 65.82 is adopted with changes to the proposed text as published in the July 22, 2016, issue of the *Texas Register* (41 TexReg 5391). The repeals, amendments to §§65.80, 65.81, 65.84, 65.85, and new §65.88 and §65.89 are adopted without change and will not be republished.

The change to §65.82, concerning Surveillance Zones; Restrictions, makes nonsubstantive changes to paragraph (2)(B)(i)(II)(-a-) - (-b-) to maintain grammatical parallelism.

On July 10, 2012, the department confirmed the first known cases of Texas wildlife infected with Chronic Wasting Disease (CWD) in two free-ranging mule deer in the Hueco Mountains of far west Texas. With that discovery, Texas joined 20 other states and two Canadian provinces where CWD has been detected in free-ranging or captive environments. In response, the department adopted §§65.80 - 65.88 (37 TexReg 10231), effective January 2, 2013, to establish zones in which the unnatural movement of deer is more restricted, and to implement mandatory check stations in certain areas in order to determine the prevalence and geographic extent of the disease.

On June 30, 2015, the department received confirmation that a two-year-old white-tailed deer held in a deer breeding facility in Medina County had tested positive for CWD, which was followed by positive test results for white-tailed deer in three additional deer breeding facilities. In addition, a hunter-harvested free-ranging mule deer in Hartley County in the Texas Panhandle tested positive for CWD in the past year. In response, the department first adopted emergency rules (40 TexReg 5566) to respond immediately to the threat, then developed interim rules (41 TexReg 815) intended to function through the 2015 - 2016 hunting season until permanent rules could be implemented. Working closely with the Texas Animal Health Commission (TAHC), the regulated community, and key stakeholders, and with the assistance of the Center for Public Policy Dispute Resolution of the University of Texas School of Law, the department developed a rule package to implement a comprehensive CWD management strategy associated with permitted deer management practices involving the unnatural movement of live deer (41 TexReg 815). Those rules were approved for adoption by the Parks and Wildlife Commission, with changes, on June 20, 2016 (referred to herein as "comprehensive CWD management rules"), and became effective on August 15, 2016 (41 TexReg 5726).

The repeal, amendments, and new section adopted in this rulemaking are necessary to harmonize the rules in Chapter 65, Subchapter B, Division 1 with the rules in Chapter 65, Subchapter B, Division 2, which implement the comprehensive CWD management strategy and to modify the types and geographical extent of the zones in which the unnatural movement of deer and the movement of deer carcasses are restricted.

The rules as adopted are a result of cooperation between the department, TAHC, and the department's CWD Task Force, comprised of wildlife-health professionals and cervid producers and are intended to protect susceptible species of exotic and native wildlife from CWD.

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, moose, reindeer, sika, and their hybrids (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 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. There is no scientific evidence to indicate that CWD is transmissible to humans. What is known is that CWD is invariably fatal to cervids, and is transmitted both directly (through deer-to-deer contact) and indirectly (through environmental contamination). Moreover, a high prevalence of the disease correlates with deer population decline in at least one free-ranging population, and human dimensions research suggests that hunters will avoid areas of high CWD prevalence. Additionally, the apparent persistence of CWD in contaminated environments represents a significant obstacle to eradication of CWD from either farmed or free-ranging cervid populations. The potential implications of CWD for Texas and its annual, multi-billion dollar ranching, hunting, real estate, tourism, and wildlife management-related economies could be significant, unless it is contained and controlled.

The department has been concerned for over a decade about the possible emergence of CWD in free-ranging and captive deer populations in Texas. Since 2002, more than 40,000 "not detected" CWD test results have been obtained from free-ranging (i.e., not breeder) deer in Texas, and deer breeders have submitted approximately 20,000 "not detected" test results as well. The intent of the proposed rules is to reduce the probability of CWD being spread from areas and deer breeding facilities where it might exist and to increase the probability of detecting and confining CWD to areas where it does exist.

Under Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, R, and R-1, the department regulates the possession of white-tailed deer and mule deer for various purposes. Subchapter C governs permits for scientific research, zoological collection, rehabilitation, and educational display of protected wildlife, which includes deer. Subchapter E governs Triple T activities (trap, transport, and transplant), in which game animals or game birds are captured and relocated to adjust populations. Subchapter E also governs Urban White-tailed Deer Removal Permits and Permits to Trap, Transport, and Process Surplus White-tailed Deer (TTP). (Unless otherwise stated, the permits issued under authority of Subchapter E are collectively referred to herein as "Triple T" permits.) Subchapter L governs deer breeder permit activities, which include, among other things, possession of captive-raised deer within a facility for breeding purposes and release of such deer. Subchapters R and R-1 govern Deer Management Permit (DMP) activities for white-tailed deer and mule deer, respectively, in which free-ranging deer may be captured and temporarily retained for breeding purposes. The department notes that although DMPs for mule deer were authorized by the legislature in 2011, no DMPs for mule deer have been issued because the department has deferred promulgation of regulations pending acquisition of requisite data to develop biologically defensible rules and address disease threats, including CWD.

Triple T, deer breeder permits, and DMP all authorize release of deer under certain circumstances. Additionally, the permits governed by Parks and Wildlife Code, Chapter 43, Subchapter C, can also include permit conditions for release.

From an epidemiological point of view, the higher the density of susceptible organisms, the more likely disease transmission is to occur, if it exists in a population. Obviously, deer kept in circumstances (facilities, pens, trailers, etc.) in which densities are many times higher than what occurs naturally are more likely to both manifest and spread communicable diseases at a higher rate or in greater numbers than would occur in a free-ranging populations. Therefore, the proposed rules are designed and intended to provide reasonable assurance that once CWD is detected it is quickly isolated and not spread as a result of increased concentration of deer, the movement of live deer under permits issued by the department, or the movement of carcasses of harvested deer.

The repeal of §65.83, concerning Buffer Zones, is necessary because buffer zones are being eliminated. Prior to this rulemaking, the rules imposed a three-tiered cordon approach to address the possibility of CWD being spread via unnatural deer movements (deer breeder, Triple T, and DMP activities often involve the physical translocation of animals at distances that are far beyond what is possible by free-ranging animals): Containment Zones (the area immediately surrounding the location where a CWD-positive animal has been found); High-Risk Zones (the area surrounding or adjoining the Containment Zone); and Buffer Zones (an area surrounding or adjoining the High-Risk Zone). The unnatural movement of deer is most rigorously regulated in Containment Zones and becomes successively less rigorously regulated as distance from where the disease was discovered increases. The comprehensive CWD management rules (Chapter 65, Subchapter B, Division 2) previously referenced in this preamble impose increased CWD-testing requirements for breeder deer, Triple T trap sites, and DMP sites where breeder deer are introduced on a statewide basis, which makes the concept of the buffer zone superfluous.

The amendment to §65.80, concerning Definitions, would eliminate the definition for "buffer zone" for the reasons discussed in the repeal of §65.83. The amendment also eliminates the term "High-Risk Zone" and replaces it with "Surveillance Zone," and removes the language defining such zones as "surrounding or being adjacent to" a Containment Zone (CZ). The department has determined that the term "high-risk" could inadvertently and unnecessarily stigmatize an area, so a term that more accurately describes the function of the zone has been selected. Additionally, for reasons discussed in the proposed amendment to §65.82, concerning Surveillance Zones; Restrictions, the amendment eliminates the phrase "adjacent to or surrounding a CZ" from the definition. The amendment also alters the definition of "susceptible species" to clarify that the term includes parts of animals and is not restricted to a whole animal.

The amendment to §65.81, concerning Containment Zones; Restrictions, redefines the boundaries of the CZ currently in effect in far west Texas and creates a new CZ in the Texas Panhandle to address the discovery of CWD in Hartley County. The CZ in far west Texas is being reduced in geographical extent in Culberson, El Paso, and Hudspeth counties. The contraction of the CZ in those counties is possible because the department's surveillance efforts indicate that CWD has not likely spread beyond the Hueco Mountains. Several factors (e.g., cervid population parameters, cervid behavior and life history, historical surveillance intensity, clear boundaries, etc.) are considered when determining the appropriate extent of a CZ or SZ; for example, when CWD was detected just across the New Mexico border in 2012, there was more than a strong possibility that infected mule deer were

present in Texas, since the movement of desert mule deer can be as much as 25-30 linear miles.

The amendment to §65.81 alters the provisions of paragraph (2)(C) by adding language to allow the recapture of deer that have escaped from a deer breeding facility within a CZ if specifically authorized under a hold order or herd plan issued by TAHC. The department has determined that escaped breeder deer may be epidemiologically significant in some instances and that recapture should be permitted if authorized by TAHC.

Under current §65.81(2)(A), the movement of deer into, out of, or within a CZ is prohibited, except for department-authorized research. The amendment to §65.81 adds new paragraph (2)(D) to allow TC 1 deer breeding facilities within a CZ to release breeder deer to immediately adjoining acreage (provided the release site and the breeding facility share the same ownership and the release site is high-fenced as required by the comprehensive CWD rules alluded to previously in this preamble). Because TC 1 breeding facilities (more thoroughly described in the comprehensive CWD management rules) represent the lowest risk of spreading CWD, the department considers the release of such breeder deer to adjoining acreage under the same ownership to present a low risk with regard to disease transmission, but all other movement of breeder deer would continue to be prohibited.

The amendment to §65.81 also changes the term "deer breeder facility" to "deer breeding facility" for purposes of consistency.

The amendment to §65.82, concerning High-Risk Zones; Restrictions, changes the title of the section to Surveillance Zones; Restrictions, as previously noted in this preamble, shrinks the geographical extent of the zone in far west Texas, creates two new zones (one to address the additional CWD discovery in the Texas Panhandle and one to address the discovery of CWD in deer breeding facilities in Medina County), and allows the unnatural movement of deer within a SZ under certain circumstances. A Surveillance Zone (SZ) is a geographic area within which the department has determined, using the best available science and data, that the presence of CWD could reasonably be expected. With respect to new paragraph (1)(C), the department is creating a Surveillance Zone in portions of Bandera, Medina, and Uvalde counties, but not a CZ. The reason for not creating a CZ is two-fold. First, the CWD discovery in this part of the state occurred in breeder deer and deer breeding facilities, which are required by law to be designed and built to both prevent the free movement of deer and contact with free-ranging deer, which coincidentally is imperative for the control and management of CWD. Second, the facilities where CWD was discovered are operating under TAHC herd plans, which restrict deer movement and require CWD testing at a level equal to or greater than that required in a CZ.

Under the previous provisions of §65.82, the unnatural movement of deer was restricted to breeder deer being transferred to or from a deer breeding facility that had achieved "Certified" status in the TAHC Herd Certification Program (i.e., "Level 'C' status as defined by 4 TAC §40.3). With the adoption of the comprehensive CWD management rules alluded to earlier in this preamble, the testing, TAHC herd status, and herd inventory requirements of previous §65.82 with respect to breeder deer are no longer necessary in §65.82; however, because the comprehensive CWD management rules create a classification system that identifies breeding facilities and prospective DMP and Triple T trap sites that are epidemiologically determined to present limited risk of CWD transfer, the amendment adds new subparagraphs (B) - (D) to paragraph (2) to address that fact and prescribes the criteria under which those activities would be allowed.

New §65.82(2)(B) addresses deer breeding facilities and provides that except as provided by the provisions of Division 2 of Subchapter B (the comprehensive CWD management rules), TC 1 breeding facilities within a SZ may transfer, receive, or liberate breeder deer within or beyond the SZ, because they represent a low risk of CWD. Similarly, the amendment allows TC 2 breeding facilities to receive deer from any deer breeder in the state authorized to transfer deer and to transfer, receive, or liberate deer within the SZ, but not beyond the SZ. TC 2 breeding facilities are those facilities that while not deemed to present the greatest risk, at the same time cannot provide sufficient epidemiological data to achieve TC 1 status; therefore, because breeder deer transferred from breeding facility to breeding facility are always within a high-fenced area, which the comprehensive CWD management rules also require for release sites, these activities can be allowed within the SZ without increasing the chance of spreading CWD beyond the SZ in the event the disease does occur within the SZ. The amendment to §65.82 also adds new subparagraph (B)(ii) to allow the recapture of deer that have escaped from a deer breeding facility within a SZ if specifically authorized under a hold order or herd plan issued by TAHC. As stated previously in this preamble, the department has determined that escaped breeder deer may be epidemiologically significant in some instances and that recapture should be permitted only if authorized by TAHC.

New §65.82(2)(C) addresses the movement of deer pursuant to Triple T permits and provides for the approval of Triple T releases in a SZ, but prohibits trapping for Triple T purposes within a SZ. From an epidemiological standpoint, the release of deer within a SZ does not present a significant risk of spreading or accelerating the spread of CWD, and in any case, the department will not approve a release that would result in deer densities greater than the habitat conditions and deer populations at the release site can sustain, which would be the major concern in evaluating disease propagation potential. Conversely, the trapping of deer from within a SZ, because the source population's disease potential is unknown, represents an unacceptable risk of disease propagation in the absence of adequate sampling data to provide sufficient confidence that CWD does not exist within that area.

New §65.82(2)(D) addresses the movement of deer pursuant to a DMP and provides for the issuance of DMPs in SZs with the proviso that any breeder deer introduced to a DMP must be released to the designated release site and cannot be returned to a deer breeding facility. A DMP authorizes the trapping and temporary detention of free-ranging deer at the trap site for breeding purposes. Breeder deer may be introduced to a DMP pen as well, but since the epidemiological status of free-ranging deer within high-fenced enclosures is unknown, it is problematic to allow breeder deer exposed to such deer to be returned to a breeding facility.

The amendment to §65.84, concerning Powers and Duties of the Executive Director, alters the terminology used in the section in order to conform the terminology with the changes proposed elsewhere in this rulemaking.

The amendment to §65.85, concerning Mandatory Check Stations, makes nonsubstantive changes to terminology to comport the section with amendments made to other sections.

New §65.88, concerning Deer Carcass Movement Restrictions, sets forth the conditions under which certain parts of a suscep-

tible species harvested within a CZ or SZ may be lawfully transported from the CZ or SZ where the harvest occurred.

New §65.88(a) prohibits the possession or transport of certain parts of a susceptible species (white-tailed deer or mule deer) taken in a state, province, or other place outside Texas where CWD has been detected in free-ranging or captive herds. CWD prions are known to be present in tissues of infected animals, especially brain, spinal cord and viscera; thus, carcasses with these tissues entering Texas from other states and countries where CWD has been confirmed represent a source of environmental contamination and a potential infection pathway to free-ranging and farmed deer in Texas. For the same reason, new subsection (a)(2) would prohibit the transport of any part of a susceptible species from within a CZ or SZ, except in compliance with the new section.

New §65.88(b) establishes exceptions to subsection (a), consisting of various types of processing that must take place in order to lawfully transport susceptible species from the place of harvest. The exceptions consist of meat that has been cut up and packaged (boned or filleted); a carcass that has been reduced to quarters with no brain or spinal tissue present; a cleaned hide (skull and soft tissue must not be attached or present); whole skull (or skull plate) with antlers attached, provided the skull or skull plate has been completely cleaned of all soft tissue; finished taxidermy products; cleaned teeth; or tissue prepared and packaged for delivery to and use by a diagnostic or research laboratory. In general, these types of processing reflect the removal of the types of tissues in which CWD prions are known to concentrate.

New §65.88(c) provides that the exceptions created by subsection (b) apply if the susceptible species is processed within the CZ or SZ where it was harvested. In order to minimize the potential that brain or spinal tissue potentially infected with CWD could be transported beyond a CZ or SZ and present a risk of environmental contamination, the processing of the susceptible species must occur within the CZ or SZ where the animal is killed.

New §65.88(d) allows a susceptible species harvested in a CZ or SZ and processed in accordance with the provisions of subsections (b) and (c) to be transported from the CZ or SZ, provided it is accompanied by a department-issued check-station receipt, which must remain with the susceptible species until it reaches a final destination. At the current time, the only mandatory check stations in Texas are located in the one CZ that has been established in west Texas; however, additional mandatory check stations will be designated in the northwest Panhandle. Therefore, the provision allows the transport of susceptible species only if the required processing has occurred and the head has been presented at a check station.

New §65.88(e) allows susceptible species harvested from a CZ or SZ, other state, Canadian province, or other place outside of Texas to be transported to a taxidermist for taxidermy purposes; however, in order to minimize the potential for environmental contamination, all brain material, soft tissue, spinal column and any unused portions of the head is required to be disposed of in a landfill permitted by the Texas Commission on Environmental Quality (TCEQ). The new subsection does not exempt hunters within a CZ or SZ from the requirement, except as specifically authorized by the department, from the requirement to submit the head of a susceptible species harvested within a CZ or SZ to a check station for tissue collection.

New §65.88(f) exempts deer harvested in Surveillance Zone 3 from the mandatory check station and documentation requirements of the section. The department was approached by concerned county officials and landowners in Medina County who committed to organizing a volunteer hunter and landowner effort to provide the department with a sufficient number of valid "not detected" CWD test results, which would allow the department to make an epidemiologically sound determination about the prevalence (if any) of CWD within Surveillance Zone 3.

New §65.89, concerning Penalties, contains the statutory penalties for violations of the proposed new rules for ease of reference.

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The department received 34 comments opposing adoption of the rules as proposed. Of those 34 comments, 21 expressed a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow. The department notes that because many individual comments contained multiple statements, and multiple individuals made similar comments, the number of responses does not equal the total number of comments.

Impacts to Deer Breeders

One commenter opposed adoption and stated that breeding facilities in a zone that achieve TC 1 or TC 2 status should be allowed to move deer outside the zone. The department disagrees with the comment and responds that with respect to a CZ, the rules do not allow the unnatural movement of deer in or out of the CZ, which is necessary because a CZ is the area where CWD has been discovered and detection of CWD elsewhere in the CZ is probable and could be spread, especially via unnatural deer movements. With respect to an SZ, the rules in fact do allow TC 1 breeding facilities to move deer into and out of the SZ, but prohibit TC 2 facilities from moving deer outside of the SZ, which is necessary because TC 2 facilities are facilities that cannot provide sufficient epidemiological proof that CWD is not present within the facility. The department believes that only those facilities that can furnish such proof should be allowed to move deer out of an area that, because of the reasonable expectation that CWD is present, has been designated a SZ. No changes were made as a result of the comment.

One commenter opposed adoption and stated that deer breeding facilities should be shut down and that all points of entry into Texas should be monitored by the department to check for CWD. The department disagrees with the comment and responds that from a disease-management perspective, while the unnatural movement of deer creates an additional risk that must be addressed, the rules as adopted, in combination with the Comprehensive CWD Management rules at Chapter 65, Subchapter B, Division 2 provide safeguards to increase the probability CWD will be detected where it exists and reduce the likelihood CWD will be spread to areas where it does not currently exist without prohibiting all movement of deer. The department also responds that fiscal and workforce realities make the monitoring of all points of entry into the state impossible to achieve. The department further responds that deer breeding is authorized by Parks and Wildlife Code, §43.352(a). No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a moratorium on all cervid movement in Texas and 100 percent testing of cervids for 16 years. The department disagrees with the comment and responds that while the unnatural movement of deer creates an additional risk that must be addressed, and while additional testing is beneficial, the rules as adopted are intended to contain CWD where it is discovered; the department's rules at Chapter 65, Subchapter B, Division 2 address testing protocols for deer movement and are not part of this rulemaking. No changes were made as a result of the comment.

One commenter opposed adoption and stated that all deer breeding and unnatural movements should be prohibited for at least three years. The department disagrees with the comment

and responds that from a disease-management perspective while the unnatural movement of deer creates an additional risk that must be addressed, the rules as adopted, in combination with the Comprehensive CWD Management rules at Chapter 65, Subchapter B, Division 2 provide safeguards to increase the probability CWD will be detected where it exists and reduce the likelihood CWD will be spread to areas where it does not currently exist without prohibiting all movement of deer. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules are unjustified and unwarranted burdens placed on completely unconnected facilities through movement restrictions of live deer authorized under TPWD permits from properties within the proposed zones. The commenter stated that because the rules prohibit a TC 2 deer breeder facility located inside the zone from moving deer outside the zone, the department has implemented an unnecessary and unjust quarantine without cause. The department disagrees with the comment and responds that the rules are warranted and completely justified in light of the threat posed by CWD to free-ranging and captive cervid populations. The rules prevent a TC 2 breeding facility from moving deer outside of a SZ because although a TC 2 breeding facility's CWD testing performance, in conjunction with testing of liberated breeder deer that are ultimately harvested by hunters, is adequate for other parts of the state, this level of testing is insufficient to allow transfer of breeder deer from deer breeding facilities located within a geographic area where the presence of CWD could reasonably be expected. This fact makes it absolutely necessary and completely defensible, from a risk-management standpoint, to prohibit movement from TC 2 facilities within a SZ to points outside the SZ. The department also notes that Chapter 65, Subchapter B, Division 2 provides a pathway for any TC 2 breeding facility to attain TC 1 status, thereby becoming able to move deer anywhere within or beyond a SZ. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "many" TC 2 facilities have been wholly compliant with four different sets of rules and will be negatively impacted by an "artificially created and unjustified CWD zone" and that such facilities should be allowed to move deer outside a SZ. The department agrees with the portion of the comment concerning the compliance of many TC 2 breeding facilities. The department disagrees that there have been four different sets of rules governing deer breeders in CWD zones or that the effect of the rules on deer breeders is the result of carelessness or recklessness on the part of the department. On the contrary, the department has been extraordinarily inclusive in the development of all regulations that might affect deer breeders. The department also disagrees, for reasons stated numerous times elsewhere in this preamble, that TC 2 breeding facilities within a SZ should be allowed to move deer outside the SZ. No changes were made as a result of the comment. The department also disagrees with the comment regarding "artificially created and unjustified CWD zones" and responds that the delineation of the zones imposed by the rules is based on the location where CWD-positive deer have been detected, the biology of white-tailed and mule deer, the nature and characteristics of CWD, and the need for easily recognizable boundaries for hunters and other deer managers to identify.

Four commenters opposed adoption and stated that the only breeding facilities that should be prevented from moving deer are those facilities that are directly connected to index facilities, a disease management approach has been largely effective in finding CWD throughout the state. The commenters also stated that the epidemiological trace-in and trace-out model utilized by the Texas Animal Health Commission should be the only tool for restricting movement of compliant breeding facilities. The department disagrees with the comments and responds that *any* connection to an index facility, in the absence of statistically valid test results indicating that CWD is not present, is a potential pathway for disease transmission. The assertion that a disease-management approach limited only to deer received directly from an index facility has ever been employed in this state is false. The department also notes that rules regarding unnatural movement of deer *are* predicated on connectivity to index facilities (the same data used by TAHC) and the ability of any given facility to provide statistical confidence that CWD is not present in the facility. No changes were made as a result of the comments.

Four commenters opposed adoption and stated that the rules determine winners and losers in the Texas deer industry. The department disagrees with the comments and responds that the rules as adopted are not for the purpose of creating "winners and losers" but are based on epidemiological risk. The department acknowledges that some areas and facilities pose a great risk and are thus subject to additional requirements. No changes were made as a result of the comments.

Economic Impacts

Three commenters opposed adoption and stated that rules constituted a severe and unprecedented restriction on commerce. The department disagrees with the comment and responds that the rules as adopted are not for the purpose of regulating commercial activity. As noted in the proposal preamble, the department acknowledges that the rules may have an economic impact on persons required to comply. The department also disagrees that the rules are unprecedented, as they were originally promulgated in 2013 and are being amended by this rulemaking. No changes were made as a result of the comments.

Four commenters opposed adoption and stated that the rules create "commercial restraints to ranches in the designated CWD zones based on geographical proximity to a CWD positive, not actually direct connection to the index facilities, which is subjective." The department disagrees with the comment and responds that the rules as adopted are not for the purpose of regulating commercial activity. As noted in the proposal preamble, the department acknowledges that the rules may have an economic impact on persons required to comply. The department also notes that as a matter of epidemiology, deer populations in proximal contact with other deer populations containing a diseased animal are at an increased risk of being exposed to disease; therefore, all populations (both captive and free-ranging) that potentially could come into contact with a diseased deer or environmental contamination as a result of normal natural deer movement are at higher risk. On that basis the rules prohibit TC 2 breeding facilities from moving deer beyond the SZ where the facility is located. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules will cause economic hardship. The department disagrees with the comment and responds that if the comment is referring to marketplace behavior associated with unnatural deer movement within a CZ or SZ, it is difficult, if not impossible, to accurately separate and distinguish marketplace behavior that is the result of the rules from marketplace behavior that is the result of the discovery of CWD. As noted previously, human dimensions research indicating that hunters will avoid areas of high CWD prevalence is cause for concern as well. Rather than create

an economic hardship, the rules as adopted, by enhancing detection and containment of CWD, are necessary to protect the state's multi-billion dollar ranching, hunting, real estate, tourism, and wildlife management-related economies. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules increase the cost of doing business and then add yet another burden to deer breeders in an attempt to put them out of business. The department disagrees that the rules are intended to be punitive or otherwise harm deer breeders. The department also disagrees that the rules impose any provision that increases the cost of doing business for deer breeders. The rules as adopted are intended solely to contain CWD where it is discovered and prevent the spread of CWD to areas in which it does not currently exists. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules will cause financial devastation for deer breeders. The department disagrees with the comment and responds that in the cases in which a breeding facility is located within a CZ (and therefore prohibited from moving deer into or outside of the CZ) or is a TC 2 breeding facility within a SZ (prohibited from moving deer outside the SZ) there could be a financial impact; however, all breeding facilities may upgrade to TC 1 status through increased CWD testing and TC 1 breeding facilities located within a CZ may release deer to a contiguous release site where hunts could be sold. Moreover, the geographical extent of the CZs and surrounding SZs may be reduced in the future if warranted based on the department's CWD surveillance efforts. TC 1 breeding facility located within a SZ may receive or transfer breeder to any breeding facility not located within a CZ and may release breeder deer on any approved release sites in this state not located within a CZ. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the rules will have an extreme negative impact on real estate values because the designation of CWD zones will create a stigma, which is both unwarranted and unnecessary. The commenters also stated that a ranch in Medina County would effectively be worth less this year than last year under the rules, simply due to the unprecedented and ad-hoc response by the department. While the department agrees that the demand for properties in areas where CWD has been discovered is likely to be less than the demand in the same area had CWD not been discovered, the presence of reasonable, efficacious, science-based rules that help to identify and exclude uninfected populations as well as prevent the spread of CWD is likely to provide some assurance to prospective buyers and sellers that a given property does not harbor CWD. The department also notes that as explained previously in this preamble, the rules are neither unwarranted nor unprecedented, although because they are intended for a specific purpose they are ad hoc by definition. No changes were made as a result of the comments.

Perceived Emergency

One commenter opposed adoption and stated that the department is treating CWD as if it were an emergency when it is not because Texas has too many deer and CWD will never cause a decline in the population of wild deer. The department disagrees with the comments and responds that if the commenter intends to suggest that the rules are unnecessary, the department disagrees and notes that CWD is a communicable, fatal disease that has the potential to profoundly alter the dynamics of deer hunting and deer management in Texas. Because there is no question that CWD exists in captive and free-ranging cervid populations in Texas and has been spread by the movement of captive cervids in Texas, there continues to be an immediate danger to Texas deer populations that warrants regulatory action by the department. The department further responds that in some states where CWD has been allowed to proliferate and spread, significant population declines have occurred. The department also notes that the rules are not being adopted pursuant to emergency rulemaking authority. No changes were made as a result of the comment.

Constitutional and Landowner Rights

One commenter opposed adoption and stated that the rules are a violation of the constitutional rights of landowners and businessmen. The department disagrees with the comment and responds that the rules as adopted do not impact any constitutionally protected right of landowners or businessmen, but regulate the possession and movement of species that the department is required to protect and regulate. The rules, as adopted are the minimum necessary to allow the department to determine the extent and combat the spread of CWD. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules infringe on private property rights. The department disagrees with the comment and responds that the rules as adopted do not affect the private property rights of any individual landowner. No changes were made as a result of the comment.

Science

One commenter opposed adoption and stated that the rules are nonsensical and out of proportion to the threat that CWD actually poses. The department disagrees with the comment and responds that in most states where CWD has been detected in free-ranging deer, if not contained, its prevalence has increased over time, and in some cases is exerting measurable negative impacts on deer populations and hunting behaviors. The long-term results of CWD are pernicious, because prions (the infectious agent) remain viable in the environment long after a host organism has died, which potentially exposes new animals to the infectious agent even after the infected animal has expired. In addition, human dimensions research indicating that hunters will avoid areas of high CWD prevalence is cause for concern as well. No changes were made as a result of the comment.

One commenter opposed adoption and stated that CWD has not killed a single deer in Texas. The department disagrees with the commenter and responds that although the deer in Texas that tested positive for CWD died from a cause other than CWD, the science evidence clearly establishes that CWD is a fatal disease and does result in mortalities. In addition, it should also be noted that CWD is an additional mortality factor in deer populations; data indicate that mortality rates can surpass fawn recruitment in local populations with high CWD prevalence. Studies have found that CWD-positive deer were much more likely to die as compared to their uninfected counterparts. (See, e.g., Edmunds 2013). While CWD-positive deer in the studies that did survive to the clinical stages of the disease did eventually succumb to CWD, preclinical CWD-positive animals were also shown to be more vulnerable to other mortality factors such as predation, hunter harvest, and vehicle collisions. This additive mortality can result in declining population trends. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department has no science to back up its belief. The department disagrees with the comment and responds that the delineation of

the zones imposed by the rules and the movement restrictions for live and dead deer are based on the biology of white-tailed and mule deer, the nature and characteristics of CWD, and the undisputable fact that unnatural deer movement is a very effective method for spreading infectious disease. No changes were made as a result of the comment.

Governmental Overreach/Authority

Two commenters opposed adoption and stated that the rules were an overreach. The department disagrees with the comment and responds that the rules as adopted are a scientifically valid, epidemiologically efficacious response to the discovery of CWD in both free-ranging and captive cervid populations in the immediate locations where the discoveries occurred. In addition, the rules' requirements are based on the risk of exposure to and spread of CWD and the need for surveillance as part of the department's effort to ensure that the rules were not, in fact, broader than necessary. No changes were made as a result of the comment. One commenter opposed adoption and stated that anyone at the department is not qualified to "make law on CWD." The department disagrees with the comment and responds that the department possesses the statutory authority to regulate the possession of native cervids and has relied upon the expertise of numerous specialists and experts to develop an effective regulatory response to the emergence of CWD in Texas. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department has overstepped its boundaries. The department disagrees with the comment and responds that under the Parks and Wildlife Code, the department has the statutory authority to regulate the possession and take of native cervids. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department does not own the deer. The department agrees with the comment and responds that under Parks and Wildlife Code, Chapter 1, all white-tailed and mule deer in the state of Texas are the property of the people of the state of Texas. No changes were made as a result of the comments.

Carcass Movement Restrictions

One commenter opposed adoption and stated that the rules should allow for the movement of venison from Surveillance Zones to major cities for processing, the movement of skulls to taxidermists, and prohibit the take of predators in order to allow diseased deer to be eliminated by nature. The department agrees with a portion of the comment and responds that the rules in fact do allow for the movement of venison from Surveillance Zones to major cities for processing and the movement of skulls to taxidermists. The department disagrees that it is necessary to prohibit the take of predators within a CZ or SZ, simply because the suppressive effects of predation on CWD transmission are believed to be negligible, particularly where host populations exist at low densities, such as in far west Texas and the Panhandle. No changes were made as a result of the comment.

Testing of Hunter-Harvested Deer

Four commenters opposed adoption and stated that mandatory testing in SZs and CZs, creates logistical problems in remote areas and that the department should establish additional check stations. The department agrees with the comments and responds that although the establishment of specific check stations is not set forth in the rules, the department intends to establish a sufficient number of check stations so as not to inconvenience hunters and landowners, especially during peak hunting times in those areas. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules are onerous to hunters and should allow the storage of harvested deer until a convenient time for testing. The department disagrees that the rules are onerous and responds that because of the threat that CWD poses it is imperative to obtain a sufficient number of valid samples as quickly as possible for testing. The department believes that it is reasonable to require harvested deer to be presented at a check station within 24 hours of take in most cases. However, the department will allow some deer to be brought to check stations exceeding the 24-hour requirement with authorization by department personnel. As noted in response to other comments, the department is committed to working with landowners to enhance convenience to the extent possible, including the establishment of additional check stations during peak hunting times. No changes were made as a result of the comment.

One commenter opposed adoption and stated that landowners should be able to call the department so that department representatives could take samples at the location where deer have been taken. The department agrees with the comment and responds that although fiscal and workforce constraints make it impossible for the department to collect samples on an on-call basis for all hunter-harvested deer, the department will attempt to accommodate such requests when possible. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should train landowners and land managers to take samples. The department agrees with the comment and responds that the department and TAHC are training non-governmental representatives to become certified sample collectors. No changes were made as a result of the comment.

One commenter opposed adoption and stated that testing for the first year should be voluntary in SZs and CZs, allowing landowners to understand the process. The department disagrees with the comment and responds that the rules allow the department, when circumstances warrant, to designate mandatory check stations in CZs and SZs. In those instances where mandatory check stations are designated, it is because the department has determined that CWD is or might be present; thus, it becomes imperative to collect as many samples as possible as quickly as possible to determine the absence, presence, and prevalence of the disease in order to inform further disease management actions. However, the department is committed to assisting landowners in understanding the process via various informational tools, including public meetings, literature, and information on the department's website. No changes were made as a result of the comment.

One commenter opposed adoption and stated that testing should be mandatory but landowners should receive a written statement from all government agencies involved stating that no action would be taken against any low fenced area where a positive CWD test occurred in the 2016/2017 hunting season. The department disagrees with the comment and responds that future actions that may or may not be taken by the department in response to the discovery of CWD would be addressed on a case-by-case basis according to the circumstances and the dictates of epidemiological science. However, the department will continue to make information available to landowners and the public via the department's web site *(www.tpwd.texas.gov),* in-

cluding Frequently Asked Questions to address this and other concerns posed by hunters and landowners. No changes were made as a result of the comment.

Miscellaneous

One commenter opposed adoption and stated that CWD isn't a problem but the rules will cause a decline in license sales and hunting opportunity. The department disagrees with the comment and responds that because the rules affect an exceedingly small portion of the state, much of which is located in remote areas, there is no reason to expect that measurable impacts to either license sales or hunting opportunity will occur. The department further notes that the rules are designed to contain CWD where it is discovered, which is intended to protect the wildlife populations that license revenue and hunting opportunity are dependent upon. Significant revenue loss and economic harm could result if CWD is not contained and managed. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the zones are artificially mandated. If the commenter means that the rules are not valid or were not validly promulgated, the department disagrees with the comment and responds that the rules were promulgated in compliance with all applicable statutes. If the commenter means that the rules are arbitrary, the department again disagrees and responds that the rules as adopted are a scientifically valid, epidemiologically efficacious response to the discovery of CWD in both free-ranging and captive cervid populations in the immediate locations where the discoveries occurred. If the commenter is referring to the geographic extent of the zones, the department notes that the zones, which for purposes of compliance and enforcement must have boundaries that are easily identified and understood, were narrowly drawn based on the location where CWD-positive deer were reported, the biology and normal range of white-tailed and mule deer, and the nature and characteristics of CWD. It should also be noted, that the rules as adopted actually shrinks the geographical extent of the CZ in far west Texas. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules are complicated and hard to understand. The department disagrees with the comment and responds that the rules establish geographical zones and clearly delineate what activities may and may not take place within those zones, as well as clearly specifying the circumstance under which susceptible species may be transported. To the greatest extent possible, the rules, as adopted, avoid complexity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the penalties for violation should be increased. The department disagrees with the comment and responds that the penalties for violations of the rules are established by statute and cannot be increased by the commission. No changes were made as a result of the comment.

One commenter opposed adoption and stated that all deer should be tested for CWD. While the department agrees that additional testing is beneficial, the department disagrees with the comment and responds that the testing of all deer is impossible; however, the rules do allow the department to require all deer harvested in a CZ or SZ to be presented at a check station for testing. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there has to be a better way to communicate the rules. The department neither agrees nor disagrees with the comment and responds that the department has made, is making, and will continue to make every effort to make the public aware of department efforts to detect and contain CWD. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the rules do not articulate what will happen if a positive result for CWD occurs within a CZ or SZ. The department agrees with the comment and responds that the rules are a mechanism for responding to the detection of CWD; they provide for the creation of geographical zones and provide for various actions that may be taken within those zones, but do not address future actions that may or may not be taken by the department in response to the discovery of CWD, which the department by design intends to address on a case-by-case basis according to the circumstances and the dictates of epidemiological science. However, the department will continue to make information available to landowners and the public via literature and the department's web site *(www.tpwd.texas.gov),* including Frequently Asked Questions to address this and other concerns posed by hunters and landowners. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that any restrictions or testing requirements of deer inside an 8-foot fence should be the same as the deer outside any fence. The department disagrees that the comment is germane to the rules being adopted, as the only testing requirements imposed by the rules are on deer that are harvested by hunters in a CZ or SZ in which mandatory check stations have been established. No changes were made as a result of the comments.

31 TAC §§65.80 - 65.82, 65.84, 65.85, 65.88, 65.89

The amendments and new rules 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 of breeder deer held under the authority of the subchapter; Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure; Subchapter R-1, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that mule deer may be temporarily detained in an enclosure (although as noted previously, the department has not yet established the DMP program for mule deer authorized by Subchapter R-1); and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

§65.82. 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 north along U.S. 87 to I.H. 27; thence north along U.S. 87/I.H. 27 to U.S. 287 in Moore County; thence north along US 287 to the Oklahoma state line.

(C) Surveillance Zone 3. That portion of the state lying within a line beginning at U. S. 90 in Hondo in Medina County; thence west along U.S. Highway 90 to F.M. 187 in Uvalde County; 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 U.S. 90 in Hondo.

(D) 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 and designated as a:

(I) TC 1 breeding facility may:

(-a-) transfer to or receive breeder deer from any other deer breeding facility in this state; and

(-b-) transfer breeder deer in this state for purposes of liberation, including to release sites within the SZ.

(II) TC 2 breeding facility:

(-a-) may receive deer from any facility in the state that is authorized to transfer deer;

(-b-) may transfer deer to a breeding facility or release site that is within the same SZ; and

(-c-) is prohibited from transferring deer to any facility outside of the SZ.

(ii) Deer that escape from a breeding facility within a SZ may not be recaptured unless specifically authorized under a hold order or herd plan issued by the Texas Animal Health Commission.

(C) 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.

(D) 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 must be released and may not be transferred to any deer breeding facility.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 9, 2016.

TRD-201604723
Ann Bright
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

31 TAC §65.83, §65.88

The repeals 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 of breeder deer held under the authority of the subchapter; Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure; Subchapter R-1, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that mule deer may be temporarily detained in an enclosure (although as noted previously, the department has not yet established the DMP program for mule deer authorized by Subchapter R-1); and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Ann Bright
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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.12

The Texas Department of Public Safety (the department) adopts amendments to §4.12, concerning Exemptions and Exceptions. This section is adopted without changes to the proposed text as published in the August 5, 2016 issue of the *Texas Register* (41 TexReg 5709) and will not be republished.

These amendments are necessary to ensure this section is consistent with interstate hours of service rules promulgated under federal statute in 49 CFR Part 395.

No comments were received regarding the adoption of these amendments.

The amendment is adopted pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

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-201604688
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 9. INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

SUBCHAPTER E. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS (ICF/IID) PROGRAM--CONTRACTING

DIVISION 4. PROVIDER SERVICE REQUIREMENTS

40 TAC §9.230

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), new §9.230, in Subchapter E, Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) Program--Contracting, Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities. The section is adopted without changes to the proposed text as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4998), and will not be republished.

The new section is adopted to implement recommendations in the Sunset Advisory Commission's July 2015 report regarding "day habilitation facilities" in the ICF/IID Program. Specifically, the Sunset Advisory Commission recommended that an ICF/IID program provider, to help ensure the safety of individuals enrolled in the ICF/IID Program, include in a contract with a day habilitation facility requirements to conduct background checks on employees and volunteers, to have an emergency response plan, to conduct fire drills, to post abuse hotline information, and to follow an individual's service plan. The adopted rule states that it does not apply to an ICF/IID program provider that operates a campus-based facility, which means it does not apply to a state supported living center or the ICF/IID component of the Rio Grande State Center. In addition, the adopted rule defines and uses the term "day habilitation center" instead of "day habilitation facility" because that is the term currently used by ICF/IID program providers for these settings.

The adopted rule also requires an ICF/IID program provider that directly operates a day habilitation center to conduct fire drills, post abuse hotline information, and have an emergency preparedness and response plan. An ICF/IID program provider is required by other rules to conduct background checks on its own employees and to provide active treatment in accordance with an individual's individual program plan, so those requirements are not included in the adopted rule.

DADS received written comments from The Arc of Texas and Disability Rights Texas. A summary of the comments and the responses follows.

Comment: A commenter is concerned that the posted notice required in §9.230(c)(2) may not be accessible to all individuals, including an individual who is blind or needs visual supports to read, an individual whose first language is not English, and an individual who can read the posted notice but may not understand

the meaning of abuse, neglect, and exploitation and how to report it. The commenter suggested that these rules encourage day habilitation providers to ensure that individuals they serve know when the notices are posted; understand what the postings say; and are educated about abuse, neglect, and exploitation, and how to file a complaint.

Response: Code of Federal Regulations (CFR), Title 42, §483.420(a)(1) requires an ICF/IID program provider to inform each individual or legally authorized representative of the individual's rights, including the right to be free from abuse, neglect, and exploitation. Code of Federal Regulations, Title 42, §483.420(a)(3) requires an ICF/IID to allow and encourage individuals to exercise their rights, including the right to file complaints. Therefore, an individual should be informed of the information by the individual's program provider. No changes were made in response to the comment.

Comment: A commenter requested that day habilitation providers and their employees be required to receive training on the reporting of abuse, neglect, and exploitation, and that such training be documented.

Response: Code of Federal Regulations, Title 42, §483.410(d)(2)(ii) requires an ICF/IID program provider to assure that services provided under agreement with an outside source meet the federal ICF/IID standards. If DADS determines that staff at a day habilitation center do not know how to report abuse, neglect, and exploitation, DADS would cite the program provider under 42 CFR §483.410(d)(3) for not ensuring outside services meet the needs of each individual, including the individual's need to be free from abuse, neglect, and exploitation. No changes were made in response to the comment.

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

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 8, 2016.

TRD-201604697
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
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For further information, please call: (361) 334-6105

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CHAPTER 15. LICENSING STANDARDS FOR PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§15.1, 15.5, 15.501, 15.1101, and 15.1302; and new §15.123, in Chapter 15, Licensing Standards for Prescribed Pediatric Extended Care Centers, without changes to the proposed text as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 5001).

The amendments and new section are adopted to implement House Bill (H.B.) 2340, 84th Legislature, Regular Session, 2015, which amended Texas Health and Safety Code (THSC), Chapter 248A, governing prescribed pediatric extended care centers (PPECCs). The adoption allows an applicant for a license to operate a PPECC to obtain a temporary license. DADS grants a temporary license if an applicant meets the requirements of a Life Safety Code inspection and DADS approves the applicant's written policies and procedures. With a temporary license, a PPECC may admit up to six minors before requesting an initial on-site health inspection. A temporary license expires 90 days after the date the license is granted unless DADS grants a one-time 90-day extension. The adoption also implements amendments made by H.B. 2340 to THSC §248A.051, clarifying that an applicant for a PPECC license may not provide services until DADS issues a license, and THSC §248A.151, providing that a parent is not required to accompany a minor during the provision of services or during transportation of a minor to and from the PPECC. The adoption also adds a definition of "license" and corrects a statutory reference related to the investigation of abuse, neglect, and exploitation in a PPECC.

DADS received no comments regarding adoption of the amendments and new section.

SUBCHAPTER A. PURPOSE, SCOPE, LIMITATIONS, COMPLIANCE, AND DEFINITIONS

40 TAC §15.1, §15.5

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Health and Safety Code, §248A.101, which provides that the HHSC executive commissioner shall adopt rules that are necessary to implement the chapter and to establish minimum standards for prescribed pediatric extended care centers.

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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Lawrence Hornsby
General Counsel
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SUBCHAPTER B. LICENSING APPLICATION, MAINTENANCE, AND FEES

40 TAC §15.123

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Health and Safety Code, §248A.101, which provides that the HHSC executive commissioner shall adopt rules that are necessary to implement the chapter and to establish minimum standards for prescribed pediatric extended care centers.

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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Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-4077

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SUBCHAPTER C. GENERAL PROVISIONS DIVISION 4. GENERAL SERVICES

40 TAC §15.501

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Health and Safety Code, §248A.101, which provides that the HHSC executive commissioner shall adopt rules that are necessary to implement the chapter and to establish minimum standards for prescribed pediatric extended care centers.

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SUBCHAPTER D. TRANSPORTATION

40 TAC §15.1101

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Health and Safety Code, §248A.101, which provides that the HHSC executive commissioner shall adopt rules that are necessary to implement the chapter and to establish minimum standards for prescribed pediatric extended care centers.

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SUBCHAPTER F. INSPECTIONS AND VISITS

40 TAC §15.1302

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Health and Safety Code, §248A.101, which provides that the HHSC executive commissioner shall adopt rules that are necessary to implement the chapter and to establish minimum standards for prescribed pediatric extended care centers.

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CHAPTER 18. NURSING FACILITY ADMINISTRATORS

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), amendments to §18.2 and §18.35, and new §18.42, in Chapter 18, Nursing Facility Administrators, without changes to the proposed text as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 5009).

The amendments and new section are adopted to implement Senate Bill (S.B.) 807 and S.B. 1307, 84th Legislature, Regular Session, 2015, which amended Texas Occupations Code, Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. The adoption addresses several areas that relate to licensure of military service members, military veterans, and military spouses. First, the adoption describes the process that a license applicant who is a military service member or a military veteran must follow to request a waiver of the application and initial license fees. Second, the adoption describes the process that a license applicant or a nursing facility administrator who is a military service member, a military veteran, or a military spouse, and who holds a license in good standing in another jurisdiction must follow to request a waiver of the application and initial license fees. Third, the adoption describes the process that a nursing facility administrator who is a military service member must follow to request two additional years to complete license renewal requirements. Fourth, the adoption describes the process that a license applicant must follow to request credit based on military service, training, or education toward the internship requirements for an administrator-in-training. Finally, the adoption describes the process a former administrator who is a military service member, a military veteran, or a military spouse must follow to request renewal of an expired license. The adoption adds definitions related to the military provisions and replaces several defined terms with acronyms. The adoption also deletes a provision related to a military member having additional time to meet continuing education requirements for license renewal because the information is included in new §18.42.

DADS received no comments regarding adoption of the amendments and new section.

SUBCHAPTER A. GENERAL INFORMATION

40 TAC §18.2

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Health and Safety Code, Chapter 242, which authorizes the executive commissioner to adopt rules regarding the licensing of nursing facility administrators; Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Occupations Code, Chapter 55, which requires a state agency to adopt rules related to licensure of military service members, military veterans, and military spouses.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. LICENSES

40 TAC §18.35, §18.42

The amendment and new section are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Health and Safety Code, Chapter 242, which authorizes the executive commissioner to adopt rules regarding the licensing of nursing facility administrators; Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Occupations Code, Chapter 55, which requires a state agency to adopt rules related to licensure of military service members, military veterans, and military spouses.

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 49. CONTRACTING FOR COMMUNITY SERVICES

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §49.102, in Subchapter A, Application and Definitions; and §49.205, in Subchapter B, Contractor Enrollment; and new §49.313, in Subchapter C, Requirements of a Contractor, in Chapter 49, Contracting for Community Services. The amendment to §49.205 is adopted with changes to the proposed text published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 5015). The amendment to §49.102 and new §49.313 are adopted without changes to the proposed text.

The adoption implements recommendations in the Sunset Advisory Commission's July 2015 report regarding "day habilitation facilities" in the Home and Community-based Services (HCS) Program, Texas Home Living (TxHmL) Program, Deaf-Blind with Multiple Disabilities (DBMD) Program, and Community Living Assistance and Support Services (CLASS) Program. Specifically, the Sunset Advisory Commission recommended that an HCS, TxHmL, DBMD, or CLASS provider, to help ensure the safety of individuals enrolled in those programs, include in a contract with a day habilitation facility requirements to conduct background checks on employees and volunteers, have an emergency response plan, conduct fire drills, post abuse hotline information, and follow an individual's service plan. The adoption does not use the term "day habilitation facility," but instead refers to a contractor or subcontractor that provides day habilitation in the HCS Program, the TxHmL Program, or the DBMD Program, or that provides prevocational services in the CLASS Program.

The adoption also requires a contractor of HCS, TxHmL, DBMD, or CLASS Program services that directly provides day habilitation or prevocational services to have an emergency response plan, conduct fire drills, and post abuse hotline information. These requirements ensure consistency with the requirements of subcontractors.

The adoption also implements Senate Bill (S.B.) 1999, 84th Texas Legislature, Regular Session, 2015, which amended the Texas Human Resources Code, Chapter 103, to change "adult day care" to "day activity and health services." Also, in accordance with DADS current policy and S.B. 202, 84th Texas Legislature, Regular Session, 2015, which repealed Texas Health and Safety Code, Chapter 781 regarding personal emergency response systems, the adoption deletes the requirement for a contractor that provides Title XX emergency response services to have a license as a personal emergency response system provider issued by the Department of State Health Services or a license as an alarm systems company issued by the Texas Private Security Board.

Changes were made in §49.205(a)(15) to use "DAHS," the acronym for "day activity and health services," and to correct the title of Chapter 98.

DADS received written comments from The Arc of Texas and Disability Rights Texas. A summary of the comments and the responses follows.

Comment: A commenter is concerned that the posted notice required in §49.313(a)(1)(B) and (b)(3), may not be accessible to all individuals, including an individual who is blind or needs visual supports to read, an individual whose first language is not English, and an individual who can read the posted notice but may not understand the meaning of abuse, neglect, and exploitation and how to report it. The commenter suggested that these rules encourage day habilitation and prevocational providers to ensure that individuals they serve know when the notices are posted; understand what the postings say; and are educated about abuse, neglect, and exploitation, and how to file a complaint.

Response: Section 49.310(4) requires a contractor that has a contract for the HCS Program, the TxHmL Program, the CLASS Program, or the DBMD Program to ensure that an individual and legally authorized representative are informed, orally and in writing, of how to report an allegation of abuse, neglect, or exploitation before or at the time the individual begins receiving program services from the contractor and at least once every 12 months thereafter. Section 49.308 requires a contractor to ensure that subcontractors comply with the requirements in Chapter 49. No changes were made in response to the comment.

Comment: A commenter requested that day habilitation providers and their employees be required to receive training on the reporting of abuse, neglect, and exploitation, and that such training be documented.

Response: Section 49.310(3) requires a contractor to ensure its employees, subcontractors, and volunteers are knowledgeable of requirements regarding abuse, neglect, or exploitation. Section 49.305(f)(5) requires a contractor to develop and maintain records regarding training of an employee, subcontractor or volunteer required by the rules and §49.308 requires a contractor to ensure that subcontractors comply with the requirements in Chapter 49. No changes were made in response to the comment.

SUBCHAPTER A. APPLICATION AND DEFINITIONS

40 TAC §49.102

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. CONTRACTOR ENROLLMENT

40 TAC §49.205

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

§49.205. License, Certification, Accreditation, and Other Requirements.

(a) To be a contractor, an applicant must have a license, certification, accreditation, or other document as follows:

(1) CLASS-CFS and CLASS-SFS require:

(A) a permit to operate a child-placing agency issued by DFPS in accordance with Chapter 745 of this title (relating to Licensing); or

(B) a HCSSA license issued by DADS in accordance with Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies) with:

(i) the licensed home health services (LHHS) category; or

(ii) the licensed and certified home health services (L&CHHS) category;

(2) CLASS-DSA requires a HCSSA license issued by DADS in accordance with Chapter 97 of this title with:

(A) the LHHS category; or

(B) the L&CHHS category;

(3) DBMD requires:

(A) a HCSSA license issued by DADS in accordance with Chapter 97 of this title with:

(i) the LHHS category; or

(ii) the L&CHHS category; and

(B) for a contractor that provides residential services to four to six individuals, an assisted living facility license Type A or Type B issued by DADS in accordance with Chapter 92 of this title (relating to Licensing Standards for Assisted Living Facilities);

(4) MDCP-AA requires, for a contractor that provides vehicle modification services, a copy of a current contractual agreement with the Department of Assistive and Rehabilitative Services (DARS) to provide vehicle modification services;

(5) MDCP-HCSSA requires a HCSSA license issued by DADS in accordance with Chapter 97 of this title with:

(A) the personal assistance services (PAS) category;

(B) the LHHS category; or

(C) the L&CHHS category;

(6) MDCP-OHR-camp requires written accreditation by the American Camping Association for providing summer camp services;

(7) MDCP-OHR-special care facility requires a special care facility license issued by the Department of State Health Services (DSHS) in accordance with 25 TAC Chapter 125 (relating to Special Care Facilities);

(8) MDCP-OHR-child care facility requires a child-care center license issued by DFPS in accordance with Chapter 745 of this title;

(9) MDCP-OHR-NF requires a nursing facility license issued by DADS in accordance with Chapter 19 of this title (relating to Nursing Facility Requirements for Licensure and Medicaid Certification);

(10) MDCP-OHR-hospital requires a hospital license issued by DSHS in accordance with 25 TAC Chapter 133 (relating to Hospital Licensing);

(11) MDCP-OHR-host family requires a foster family home license issued by DFPS in accordance with Chapter 745 of this title or verification as a child-placing agency foster family home issued by a child placing agency in accordance with Chapter 749 of this title (relating to Minimum Standards for Child-Placing Agencies);

(12) TAS requires:

(A) written documentation from DARS or the Rehabilitation Services Administration that the applicant is a center for independent living, as defined by 29 United States Code §796a;

(B) a contract other than the TAS contract; or

(C) written designation by DADS as an area agency on aging;

(13) Medicaid hospice requires:

(A) a HCSSA license for hospice issued by DADS in accordance with Chapter 97 of this title; and

(B) a written notification from the Centers for Medicare and Medicaid Services that the applicant is certified to participate as a hospice agency in the Medicare Program;

(14) PHC/CAS, and FC require a HCSSA license issued by DADS in accordance with Chapter 97 of this title with:

(A) the LHHS category;

(B) the L&CHHS category; or

(C) the PAS category;

(15) DAHS requires a DAHS facility license issued by DADS in accordance with Chapter 98 of this title (relating to Day Activity and Health Services);

(16) Title XX AFC requires for an AFC facility serving four to eight individuals, an assisted living facility license Type A or Type B issued by DADS in accordance with Chapter 92 of this title; and

(17) Title XX RC requires an assisted living facility license Type A or Type B issued by DADS in accordance with Chapter 92 of this title.

(b) The license, certification, accreditation, or other document required by subsection (a) of this section must be valid in the service or catchment area:

(1) in which the applicant is seeking to provide services; or

(2) covered under the contractor's contract.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. REQUIREMENTS OF A CONTRACTOR

40 TAC §49.313

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

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CHAPTER 94. NURSE AIDES

40 TAC §§94.2, 94.11, 94.13

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), amendments to §94.2 and §94.11; and new §94.13, in Chapter 94, Nurse Aides, without changes to the proposed text as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 5021). The rules will not be republished.

The amendments and new section are adopted to implement Senate Bill (S.B.) 807 and S.B. 1307, 84th Legislature, Regular Session, 2015, which amended Texas Occupations Code, Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. The adoption describes the process a nurse aide who is a military service member must follow to request an additional two years to complete in-service education requirements to maintain a listing on the nurse aide registry (NAR). The adoption also describes the process a former nurse aide who is a military service member, a military veteran, or a military spouse must follow to request that the status of a listing on the NAR be changed from expired to active during the five years after expiration.

The adoption adds definitions related to the military provisions and replaces several defined terms with acronyms. The adoption also deletes a provision allowing a military spouse to be listed on the NAR with active status for up to five years after the listing expires under certain circumstances because the information is included in new §94.13.

DADS received no comments regarding adoption of the amendments and new section.

The amendments and new section are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; Texas Health and Safety Code, Chapter 250, which requires DADS to maintain a Nurse Aide Registry; and Texas Occupations Code, Chapter 55, which requires a state agency to adopt rules related to licensure of military service members, military veterans, and military spouses.

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 95. MEDICATION AIDES--PROGRAM REQUIREMENTS

40 TAC §§95.101, 95.103, 95.105, 95.107, 95.109, 95.113, 95.115, 95.117, 95.119, 95.121, 95.123, 95.125, 95.127 - 95.129

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§95.101, 95.103, 95.105, 95.107, 95.109, 95.113, 95.115, 95.117, 95.119, 95.121, 95.123, 95.125, 95.127, and 95.128; and new §95.129, in Chapter 95, Medication Aides--Program Requirements. The amendments to §§95.105, 95.125, and 95.128, and new §95.129 are adopted with changes to the proposed text as published in the July 15, 2016, issue of the *Texas Register* (41 TexReg 5142). The amendments to §§95.101, 95.103, 95.107, 95.109, 95.113, 95.115, 95.117, 95.119, 95.121, 95.123, and 95.127 are adopted without changes to the proposed text.

The adopted rules provide that DADS does not issue or renew a permit if a medication aide applicant or a medication aide is listed as unemployable on the Employee Misconduct Registry (EMR), listed as revoked on the Nurse Aide Registry (NAR), or has been convicted of certain offenses. The adopted rules specify criteria used to determine if a renewal application is late and allow DADS to use an applicant's email address of record as contact information. Certain practices, currently described as exceptions to prohibited practices, are listed as permissible practices. The adoption clarifies that any practice not listed in the rule is prohibited. Throughout the chapter, the adopted amendments change the term "permit holder" to "medication aide" to be consistent and to use a defined term.

The adopted amendments and new section also implement Senate Bill (S.B.) 807 and S.B. 1307, 84th Legislature, Regular Session, 2015, which amended Texas Occupations Code, Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. The adopted amendments add definitions of terms related to these provisions and the new section addresses several areas that relate to issuing medication aide permits to military service members, military veterans, and military spouses.

Throughout the chapter, grammatical and editorial changes were made for clarity and consistency, and to correct formatting structure.

DADS received no comments regarding adoption of the amendments and new section.

The agency added a provision to §95.125(e)(2) that allows an applicant for a corrections medication aide permit to provide the written results of a general educational development (GED) test, instead of a high school diploma or transcript. The agency also added new paragraphs to §95.125(e) and §95.128(i) stating that DADS verifies the accreditation of the high school that issued a diploma or transcript, or the testing service or program that certified a GED test of an applicant for a corrections medication aide permit or a home health medication aide permit. Further, if DADS is unable to verify the accreditation of the school, service, or program, DADS may require the applicant to submit additional documentation to verify the accreditation status. These additions, which apply to corrections medication aides and home health medication aides, are consistent with existing rules that govern other medication aides.

A minor editorial change was made to the text of §95.105 to correct a spelling error, and to §95.129 to correct a reference to another section in Chapter 95.

The amendments and new section are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Health and Safety Code, §142.023, which authorizes the HHSC executive commissioner to establish standards for home health medication aides, and §242.608, which authorizes the HHSC executive commissioner to adopt rules regulating medication aides in nursing facilities; Texas Human Resources Code, §161.083, which authorizes the executive commissioner to establish minimum standards and requirements for the issuance of corrections medication aide permits; and Texas Occupations Code, Chapter 55, which requires a state agency to adopt rules related to licensure of military service members, military veterans, and military spouses.

§95.105. Allowable and Prohibited Practices of a Medication Aide.

(a) A medication aide under Texas Health and Safety Code, Chapter 242, Subchapter N, may:

(1) observe and report to the facility's charge licensed nurse reactions and side effects to medication shown by a resident;

(2) take and record vital signs before the administration of medication that could affect or change the vital signs;

(3) administer regularly prescribed medication to a resident if the medication aide:

(A) is trained to administer the medication;

(B) personally prepares the medication or sets up the medication to be administered from a unit dose pack; and

(C) documents the administration of the medication in the resident's clinical record;

(4) administer oxygen per nasal cannula or a non-sealing mask only in an emergency, after which the medication aide must verbally notify the licensed nurse on duty or on call and appropriately document the action and notification;

(5) apply specifically ordered ophthalmic, otic, nasal, vaginal, and rectal medication;

(6) administer previously ordered PRN medication, if:

(A) the facility's licensed nurse on duty or on call authorizes the medication;

(B) the medication aide documents in the resident's records the symptoms indicating the need for the medication and the time the symptoms occurred;

(C) the medication aide documents in the resident's records that the facility's licensed nurse was contacted, symptoms were described, and the licensed nurse granted permission to administer the medication, including the time of contact;

(D) the medication aide obtains authorization to administer the medication from the facility's licensed nurse on duty or on call each time the symptoms occur; and

(E) the medication aide ensures that the resident's record is co-signed by the licensed nurse who gave authorization by the end of the nurse's shift or, if the nurse was on call, by the end of the nurse's next shift;

(7) measure a prescribed amount of a liquid medication to be administered to a resident;

(8) break a tablet to be administered to a resident, if:

(A) the resident's medication card or its equivalent accurately documents how the tablet must be broken before administration; and

(B) the licensed nurse on duty or on call has calculated the dosage;

(9) crush medication, if the medication aide:

(A) obtains authorization to crush the medication from the licensed nurse on duty or on call; and

(B) documents the authorization on the resident's medication card or its equivalent; and

(10) electronically order a refill of medication from a pharmacy, if the refill request is signed by the licensed nurse on duty or on call.

(b) A medication aide under Texas Health and Safety Code, Chapter 242, Subchapter N, may not:

(1) administer medication by the injection route including:

(A) intramuscular route;

(B) intravenous route;

(C) subcutaneous route;

(D) intradermal route; and

(E) hypodermoclysis route;

(2) administer medication used for intermittent positive pressure breathing treatments or any form of medication inhalation treatments;

(3) administer previously ordered PRN medication, except in accordance with subsection (a)(6) of this section;

(4) administer medication that, according to the resident's clinical records, has not been previously administered to the resident;

(5) calculate a resident's medication doses for administration;

(6) crush medication, except in accordance with subsection (a)(9) of this section;

(7) administer medications or feedings by way of a tube inserted in a cavity of the body;

(8) receive or assume responsibility for reducing to writing a verbal or telephone order from a healthcare professional;

(9) order a resident's medications from a pharmacy, except in accordance with subsection (a)(10) of this section;

(10) apply topical medications that involve the treatment of skin that is broken or blistered or when a specified aseptic technique is ordered by the attending physician;

(11) steal, divert, or otherwise misuse medication;

(12) violate any provision of the Texas Health and Safety Code or this chapter;

(13) fraudulently procure or attempt to procure a permit;

(14) neglect to administer appropriate medications, as prescribed, in a responsible manner; or

(15) administer medications if the person is unable to do so with reasonable skill and safety to residents by reason of drunkenness or excessive use of drugs, narcotics, chemicals, or any other type of material.

(c) If a practice is not described in subsection (a) of this section the practice is prohibited for a medication aide under Texas Health and Safety Code, Chapter 242, Subchapter N.

§95.125. Requirements for Corrections Medication Aides.

(a) Purpose. The purpose of this section is to provide the qualifications, conduct, and practice activities of a medication aide employed in a correctional facility or employed by a medical services contractor for a correctional facility.

(b) Supervision and applicable law and rules. A medication aide must function under the direct supervision of a licensed nurse on duty or on call by the correctional facility using the medication aide. A medication aide must:

(1) function in accordance with applicable law and rules relating to administration of medication and operation of a correctional facility; and

(2) comply with TDCJ rules applicable to personnel used in a correctional institution.

(c) Allowable and prohibited practices of a medication aide.

(1) A medication aide may:

(A) observe and report to the correctional facility's charge nurse reactions and side effects to medication shown by an inmate;

(B) take and record vital signs before the administration of medication which could affect or change the vital signs;

(C) administer regularly prescribed medication to an inmate if the medication aide:

(i) is trained to administer the medication;

(ii) personally prepares the medication or sets up the medication to be administered; and

(iii) documents the administration of the medication in the inmate's clinical record;

(D) administer oxygen per nasal cannula or a non-sealing mask only in an emergency, after which the medication aide must verbally notify the licensed nurse on duty or on call and appropriately document the action and notification;

(E) apply specifically ordered ophthalmic, otic, nasal, vaginal, and rectal medication;

(F) administer previously ordered PRN medication. A medication aide must document in the inmate's records, symptoms indicating the need for the medication, and the time the symptoms occurred;

(G) administer the initial dose of a medication;

(H) order an inmate's medications from the correctional institution's pharmacy;

(I) measure a prescribed amount of a liquid medication to be administered;

(J) break a tablet for administration to an inmate if:

(i) the licensed nurse on duty or on call has calculated the dosage; and

(ii) the inmate's medication card or its equivalent accurately documents how the tablet must be altered before administration; and

(K) crush medication if:

(i) authorization is obtained from the licensed nurse on duty or on call; and

(ii) the authorization is documented on the inmate's medication card or its equivalent.

(2) A medication aide may not:

(A) administer medication by the injection route including:

(i) intramuscular;

(ii) intravenous;

(iii) subcutaneous;

(iv) intradermal; and

(v) hypodermoclysis;

(B) administer medication used for intermittent positive pressure breathing treatments or any form of medication inhalation treatments;

(C) calculate an inmate's medication dose for administration;

(D) crush medication, except in accordance with subsection (c)(1)(K) of this section;

(E) administer medications or feedings by way of a tube inserted in a cavity of the body;

(F) receive or assume responsibility for reducing to writing a verbal or telephone order from a physician, dentist, or podiatrist;

(G) apply topical medications that involve the treatment of skin that is broken or blistered or when a specified aseptic technique is ordered by the attending licensed practitioner;

(H) steal, divert, or otherwise misuse medications;

(I) violate any provision of Texas Human Resources Code, §161.083, or this chapter;

(J) fraudulently procure or attempt to procure a permit;

(K) neglect to administer appropriate medications, as prescribed, in a responsible manner; or

(L) administer medications if the person is unable to do so with reasonable skill and safety to residents by reason of drunkenness or excessive use of drugs, narcotics, chemicals, or any other type of material.

(d) Background and education requirements. Before applying for a corrections medication aide permit under Texas Human Resources Code, §161.083, an applicant must be:

(1) able to read, write, speak, and understand English;

(2) at least 18 years of age;

(3) free of communicable diseases and in suitable physical and emotional health to safely administer medications;

(4) a graduate of a high school or successfully passed a general educational development test; and

(5) employed in a correctional facility or by a medical service contractor for a correctional facility on the first day of an applicant's medication aide training program.

(e) Application. An applicant for a corrections medication aide permit under Texas Human Resources Code, §161.083 must submit an official Corrections Medication Aide application form to DADS.

(1) An applicant must submit the general statement enrollment form that contains:

(A) specific information regarding personal data, certain misdemeanor and felony convictions, work experience, education, and training;

(B) a statement that all the requirements in subsection (d) of this section were met before the start of the program;

(C) a statement that the applicant understands that application fees submitted in the permit process are nonrefundable;

(D) a statement that the applicant understands material submitted in the application process are nonreturnable;

(E) a statement that the applicant understands that it is a misdemeanor to falsify any information submitted to DADS; and

(F) the applicant's dated and notarized signature.

(2) An applicant must submit a certified copy or a photocopy that has been notarized as a true and exact copy of an unaltered original of the applicant's high school graduation diploma or transcript, or the written results of a general educational development (GED) test.

(3) DADS verifies the accreditation of the high school that issued the diploma or transcript, or the testing service or program that certified the GED test required by paragraph (2) of this subsection. If DADS is unable to verify the accreditation status of the school, testing service, or program, and DADS requests additional documentation from the applicant to verify the accreditation status, the applicant must provide the documentation to DADS.

(4) DADS considers a corrections medication aide permit application as officially submitted when DADS receives the permit application.

(5) DADS sends a notice listing the additional materials required to an applicant who does not complete the application. An application not completed by the day of the TDCJ final exam is void.

(6) DADS sends notice of application approval or deficiency in accordance with §95.127 of this chapter (relating to Application Processing).

(f) Fees. An applicant must pay application and permit renewal fees for a corrections medication aide permit by cashier's check or money order made payable to the Department of Aging and Disability Services. All fees are nonrefundable, except as provided by Texas Government Code, Chapter 2005. The fee schedule is as follows:

(1) permit application fee--$15;

(2) renewal fee--$15;

(3) late renewal fees for permit renewals made after the permit expires:

(A) $22.50 for an expired permit renewed from one to 90 days after expiration;

(B) $30 for an expired permit renewed from 91 days to one year after expiration; and

(4) permit replacement fee--$5.

(g) Examination procedures. TDCJ gives a written examination to each applicant at a site determined by TDCJ. An applicant with a disability, including an applicant with dyslexia as defined in Texas Ed-

ucation Code, §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the examination under the Americans with Disabilities Act.

(1) The applicant must meet the requirements of the TDCJ training program described in §95.119(d) of this chapter (relating to Training Program Requirements) before taking the written examination.

(2) The applicant must be tested on the subjects taught in the TDCJ training program curriculum and correctional facility clinical experience. The examination must test an applicant's knowledge of accurate and safe drug therapy administered to a correctional facility inmate.

(3) TDCJ administers the examination and determines the passing grade.

(4) TDCJ must inform DADS, on the DADS class roster form, of the final exam results for each applicant within 15 days after completion of the exam.

(5) An applicant who is unable to attend the applicant's scheduled examination due to unforeseen circumstances must contact TDCJ to reschedule.

(6) If an applicant fails the examination, TDCJ notifies DADS and the applicant in writing of the failure to pass the examination. The applicant may take one subsequent examination without having to re-enroll in the training program described in §95.119 of this chapter.

(7) An applicant whose application for a permit is denied under §95.113 of this chapter (relating to Determination of Eligibility) is ineligible to take the examination.

(h) Determination of eligibility. DADS determines eligibility for a corrections medication aide permit applicant according to §95.113 of this chapter and subsections (d), (e), (f), and (g) of this section.

(i) Renewal. A permit must be renewed in accordance with §95.115 of this chapter (relating to Permit Renewal).

(j) Changes. Medication aides must report changes in accordance with §95.117 of this chapter (relating to Changes).

(k) Violations, complaints, and disciplinary actions.

(1) Complaints. Any person may complain to DADS alleging that a person or program has violated Texas Human Resources Code, §161.083, or this chapter. DADS handles complaints in the manner set forth in §95.123 of this chapter (relating to Violations, Complaints, and Disciplinary Actions).

(2) Investigations of abuse and neglect complaints. Allegations of abuse and neglect of inmates by corrections medication aides are investigated by the TDCJ Office of Inspector General. After an investigation, the TDCJ Office of Inspector General issues a report to DADS with findings of abuse or neglect against the corrections medication aide. After reviewing the report and findings, DADS determines whether to initiate a formal proceeding to revoke, suspend, or refuse to renew a corrections medication aide permit. If DADS determines a formal proceeding to revoke, suspend, or refuse to renew a corrections medication aide permit should be initiated, §95.123(c) and (d) of this chapter apply. If DADS determines that no formal proceeding to revoke, suspend, or refuse to renew a corrections medication aide permit should be initiated, DADS dismisses the complaint against the corrections medication aide and gives written notice of the dismissal to the corrections medication aide.

(l) Section 95.121 of this chapter (relating to Permitting of Persons with Criminal Backgrounds) applies to corrections medication aides under this chapter.

§95.128. Home Health Medication Aides.

(a) General.

(1) A person may not administer medication to a client unless the person:

(A) holds a current license under state law that authorizes the licensee to administer medication;

(B) holds a current permit issued under this section and acts under the delegated authority of an RN to administer medication;

(C) administers a medication to a client in accordance with rules of the BON that permit delegation of the administration of medication to a person not holding a permit under this section; or

(D) administers noninjectable medication under circumstances authorized by the memorandum of understanding between the BON and DADS.

(2) A HCSSA that provides licensed and certified home health services, licensed home health services, hospice services, or personal assistance services may use a home health medication aide. If there is a direct conflict between the requirements of this chapter and federal regulations, the requirements that are more stringent apply to the licensed and certified HCSSA.

(3) Exemptions are as follows.

(A) A person may administer medication to a client without the license or permit as required in paragraph (1) of this subsection if the person is:

(i) a graduate nurse holding a temporary permit issued by the BON;

(ii) a student enrolled in an accredited school of nursing or program for the education of RNs who is administering medications as part of the student's clinical experience;

(iii) a graduate vocational nurse holding a temporary permit issued by the BON;

(iv) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or

(v) a trainee in a medication aide training program approved by DADS under this chapter who is administering medications as part of the trainee's clinical experience.

(B) Supervision of an exempt person described in subparagraph (A) of this paragraph is as follows.

(i) A person described in:

(I) subparagraph (A)(i) of this paragraph shall be supervised by an RN;

(II) subparagraph (A)(ii) or (iv) of this paragraph shall be supervised by the student's instructor; or

(III) subparagraph (A)(iii) of this paragraph shall be supervised by an RN or licensed vocational nurse.

(ii) Supervision must be on-site.

(C) An exempt person described in this subsection may not be used in a supervisory or charge position.

(b) Required actions.

(1) If a HCSSA provides home health medication aide services the HCSSA must employ a home health medication aide to provide the home health medication aide services. The HCSSA must employ or contract with an RN to perform the initial health assessment, prepare the client care plan, establish the medication list, medication administration record, and medication aide assignment sheet, and supervise the home health medication aide. The RN must be available to supervise the home health medication aide when home health medication aide services are provided.

(2) The clinical records of a client using a home health medication aide must include a statement signed by the client or family acknowledging receipt of the list of permitted and prohibited acts of a home health medication aide.

(3) The RN must be knowledgeable of DADS rules governing home health medication aides and must ensure that the home health medication aide is in compliance with the Texas Health and Safety Code, Chapter 142, Subchapter B.

(4) A home health medication aide must:

(A) function under the supervision of an RN;

(B) comply with applicable law and this chapter relating to administration of medication and operation of the HCSSA;

(C) comply with DADS rules applicable to personnel used in a HCSSA; and

(D) comply with this section and §97.701 of this title (relating to Home Health Aides) if the person will be used as a home health aide and a home health medication aide.

(5) The RN must make a supervisory visit while the medication aide is in the client's residence in accordance with §97.298 of this title (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel and Tasks Not Requiring Delegation).

(c) Permitted actions. A home health medication aide is permitted to:

(1) observe and report to the HCSSA RN and document in the clinical record any reactions and side effects to medication shown by a client;

(2) take and record vital signs of a client before administering medication that could affect or change the vital signs;

(3) administer regularly prescribed medication to a client if the medication aide:

(A) is trained to administer the medication;

(B) personally prepares the medication or sets up the medication to be administered; and

(C) documents the administration of the medication in the client's clinical record;

(4) administer oxygen per nasal cannula or a non-sealing face mask only in an emergency, after which the medication aide must verbally notify the supervising RN and appropriately document the action and notification;

(5) apply specifically ordered ophthalmic, otic, nasal, vaginal, topical, and rectal medication unless prohibited by subsection (d)(10) of this section;

(6) administer medications only from the manufacturer's original container or the original container in which the medication had been dispensed and labeled by the pharmacy with all information mandated by the Texas State Board of Pharmacy; and

(7) administer previously ordered PRN medication if:

(A) the HCSSA's RN authorizes the medication;

(B) the medication aide documents in the client's clinical notes the symptoms indicating the need for medication and the time the symptoms occurred;

(C) the medication aide documents in the client's clinical notes that the HCSSA's RN was contacted, symptoms were described, and the HCSSA's RN granted permission to administer the medication, including the time of contact;

(D) the medication aide obtains authorization to administer the medication each time the symptoms occur; and

(E) the medication aide ensures that the client's clinical record is co-signed by the RN who gave permission within seven days after the notes are incorporated into the clinical record;

(8) measure a prescribed amount of a liquid medication to be administered;

(9) break a tablet for administration to a client if:

(A) the client's medication administration record accurately documents how the tablet must be altered before administration; and

(B) the licensed nurse on duty or on call has calculated the dosage;

(10) crush medication, if:

(A) authorization has been given in the original physician's order or the medication aide obtains authorization from the HCSSA's RN; and

(B) the medication aide documents the authorization on the client's medication administration record.

(d) Prohibited actions. A home health medication aide must not:

(1) administer a medication by any injectable route, including:

(A) intramuscular route;

(B) intravenous route;

(C) subcutaneous route;

(D) intradermal route; and

(E) hypodermoclysis route;

(2) administer medication used for intermittent positive pressure breathing treatment or any form of medication inhalation treatments;

(3) administer previously ordered PRN medication except in accordance with subsection (c)(7) of this section;

(4) administer medication that, according to the client's clinical records, has not been previously administered to the client;

(5) calculate a client's medication doses for administration;

(6) crush medication, except in accordance with subsection (c)(10) of this section;

(7) administer medications or feedings by way of a tube inserted in a cavity of the body except as specified §97.404(h) of this title;

(8) receive or assume responsibility for reducing to writing a verbal or telephone order from a physician, dentist, podiatrist or advanced practice nurse;

(9) order a client's medication from a pharmacy;

(10) apply topical medications that involve the treatment of skin that is broken or blistered when a specified aseptic technique is ordered by the attending physician;

(11) administer medications from any container other than the manufacturer's original container or the original container in which the medication had been dispensed and labeled by the pharmacy with all information mandated by the Texas State Board of Pharmacy;

(12) steal, divert, or otherwise misuse medications;

(13) violate any provision of the statute or of this chapter;

(14) fraudulently procure or attempt to procure a permit;

(15) neglect to administer appropriate medications, as prescribed, in a responsible manner; or

(16) administer medications if the person is unable to do so with reasonable skill and safety to clients by reasons of drunkenness, inappropriate use of drugs, narcotics, chemicals, or any other type of material.

(e) Applicant qualifications. Each applicant for a permit issued under Texas Health and Safety Code, Chapter 142, Subchapter B must complete a training program. Before enrolling in a training program and applying for a permit under this section, all applicants:

(1) must be able to read, write, speak, and understand English;

(2) must be at least 18 years of age;

(3) must be free of communicable diseases and in suitable physical and emotional health to safely administer medications;

(4) must be a graduate of an accredited high school or have proof of successfully passing a general educational development test;

(5) must have satisfactorily completed a home health aide training and competency evaluation program or a competency evaluation program under §97.701 of this title;

(6) must not have been convicted of a criminal offense listed in Texas Health and Safety Code, §250.006(a), or convicted of a criminal offense listed in Texas Health and Safety Code, §250.006(b) within five years before the date DADS receives a permit application;

(7) must not be listed as unemployable on the EMR; and

(8) must not be listed with a revoked or suspended status on the NAR.

(f) Nursing graduates. A person who is a graduate of an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirements for issuance of a permit under this section if the date of graduation from the nursing school was no earlier than January 1 of the year immediately preceding the year of application for a permit under this section.

(1) The applicant must submit a DADS application form to DADS. The applicant must meet the requirements of subsection (e)(1) - (6) of this section.

(2) The application must be accompanied by the combined permit application and examination fee.

(3) The applicant must include an official transcript documenting graduation from an accredited school of nursing.

(4) DADS acknowledges receipt of the application by sending the applicant a copy of this chapter and DADS open book examination.

(5) The applicant must complete the open book examination and return it to DADS by the date given in the examination notice.

(6) The applicant must complete DADS written examination. DADS determines the site of the examination. DADS denies the application of an applicant failing to schedule and take the examination by the date given in the examination notice.

(7) An open book or written examination may not be retaken if the applicant fails.

(8) Upon successful completion of the two examinations, DADS evaluates all application documents submitted by the applicant.

(9) DADS notifies the applicant in writing of the examination results.

(g) Nursing students. A person who is attending or has attended an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirements for issuance of a permit under this section if the person:

(1) attended the nursing school no earlier than January 1 of the year immediately preceding the year of application for a permit under this section;

(2) successfully completed courses at the nursing school that cover DADS curriculum for a home health medication aide training program;

(3) submits a statement with the person's application for a permit under this section, that is signed by the nursing school's administrator or other authorized individual who is responsible for determining that the courses that he or she certifies cover DADS curriculum and certifies that the person completed the courses specified under paragraph (2) of this subsection; and

(4) complies with subsection (f)(1) - (2) and (4) - (9) of this section.

(h) Reciprocity. A person who holds a valid license, registration, certificate, or permit as a home health medication aide issued by another state whose minimum standards or requirements are substantially equivalent to or exceed the requirements of this section in effect at the time of application may request a waiver of the training program requirement as follows:

(1) The applicant must submit a DADS application form to DADS. The applicant must meet the requirements of subsection (e)(1) - (4) of this section.

(2) The application must be accompanied by the combined permit application and exam fee.

(3) The application must include a current copy of the rules of the other state governing its licensing and regulation of home health medication aides, a copy of the legal authority, including the law, act, code, or section, for the state's licensing program, and a certified copy of the license or certificate by which the reciprocal permit is requested.

(4) DADS acknowledges receipt of the application by sending the applicant a copy of this chapter and of DADS open book examination.

(5) DADS may contact the issuing agency to verify the applicant's status with the agency.

(6) The applicant must complete DADS open book examination and return it to DADS by the date given in the examination notice.

(7) The applicant must complete DADS written examination. The site of the examination is determined by DADS. DADS denies the application of an applicant failing to schedule and take the examination by the date given in the examination notice.

(8) An open book or written examination may not be retaken if the applicant fails.

(9) Upon successful completion of the two examinations, DADS evaluates all application documents submitted by the applicant.

(10) DADS notifies the applicant in writing of the examination results.

(i) Application by trainees. An applicant under subsection (e) of this section must submit to DADS, no later than 30 days after enrollment in a training program, an application, including all required information and documentation on DADS forms.

(1) DADS considers an application as officially submitted when DADS receives the nonrefundable combined permit application and examination fee payable to the Department of Aging and Disability Services. The fee required by subsection (n) of this section must accompany the application form.

(2) The general statement enrollment form must contain the following application material that is required of all applicants:

(A) specific information regarding personal data, certain misdemeanor and felony convictions, work experience, education, and training;

(B) a statement that all of the requirements in subsection (e) of this section were met before the start of the program;

(C) a statement that the applicant understands that the application fee submitted in the permit process is nonrefundable;

(D) a statement that the applicant understands that materials submitted in the application process are not returnable;

(E) a statement that the applicant understands that it is a misdemeanor to falsify any information submitted to DADS; and

(F) the applicant's signature that has been dated and notarized.

(3) The applicant must submit a certified copy or notarized photocopy of an unaltered original of the applicant's high school graduation diploma or transcript, or an equivalent document demonstrating that the applicant successfully passed a general educational development (GED) test, unless the applicant is applying under subsection (f) of this section.

(4) DADS verifies the accreditation of the high school that issued the diploma or transcript, or the testing service or program that certified the GED test required by paragraph (3) of this subsection. If DADS is unable to verify the accreditation status of the school, testing service, or program, and DADS requests additional documentation from the applicant to verify the accreditation status, the applicant must provide the documentation to DADS.

(5) DADS sends a notice listing the additional materials required to an applicant who does not complete the application. An application not completed within 30 days after the date of the notice will be void.

(6) DADS sends notice of application acceptance, disapproval, or deficiency in accordance with subsection (q) of this section.

(j) Examination. DADS gives a written examination to each applicant at a site DADS determines.

(1) No final examination may be given to an applicant until the applicant has met the requirements of subsections (e) and (i) of this section, and if applicable, subsections (f), (g), or (h) of this section.

(2) An applicant with a disability, including an applicant 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 examination under the Americans with Disabilities Act.

(3) The applicant must be tested on the subjects taught in the training program curricula and clinical experience. The examination covers an applicant's knowledge of accurate and safe drug therapy to clients.

(4) A training program must notify DADS at least four weeks before its requested examination date.

(5) DADS determines the passing grade on the examination.

(6) DADS notifies in writing an applicant who fails the examination.

(A) DADS may give an applicant under subsection (e) of this section one subsequent examination, without additional payment of a fee, upon the applicant's written request to DADS.

(B) A subsequent examination must be completed by the date given on the failure notification. DADS determines the site of the examination.

(C) Another examination will not be permitted if the student fails the subsequent examination unless the student enrolls and successfully completes another training program.

(7) An applicant who is unable to attend the applicant's scheduled examination due to unforeseen circumstances may be given an examination at another time without payment of an additional fee upon the applicant's written request to DADS. The examination must be completed within 45 days from the date of the originally scheduled examination. DADS determines the site for the rescheduled examination.

(8) An applicant whose application for a permit will be disapproved under subsection (k) of this section is ineligible to take the examination.

(k) Determination of eligibility. DADS approves or disapproves all applications. DADS sends notices of application approval, disapproval, or deficiency in accordance with subsection (q) of this section.

(1) DADS denies an application for a permit if the person has:

(A) not met the requirements of subsections (e) - (i) of this section, if applicable;

(B) failed to pass the examination prescribed by DADS as set out in subsection (j) of this section;

(C) failed to or refused to properly complete or submit any application form, endorsement, or fee, or deliberately presented false information on any form or document required by DADS;

(D) violated or conspired to violate the Texas Health and Safety Code, Chapter 142, Subchapter B, or any provision of this chapter; or

(E) been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a medication aide as set out in subsection (r) of this section.

(2) If, after review, DADS determines that the application should not be approved, DADS gives the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing in accordance with subsection (r) of this section.

(l) Medication aide. Home health medication aides must comply with the following permit renewal requirements.

(1) When issued, a permit is valid for one year.

(2) A medication aide must renew the permit annually.

(3) The renewal date of a permit is the last day of the current permit.

(4) Each medication aide is responsible for renewing the permit before the expiration date. Failure to receive notification from DADS before the expiration date of the permit does not excuse the medication aide's failure to file for timely renewal.

(5) A medication aide must complete a seven hour continuing education program approved by DADS before expiration of the permit in order to renew the permit. Continuing education hours are not required for the first renewal. After a permit is renewed for the first time, the medication aide must earn approved continuing education hours to have the permit renewed again.

(6) DADS denies renewal of the permit of a medication aide who is in violation of the Texas Health and Safety Code, Chapter 142, Subchapter B, or this chapter at the time of application for renewal.

(7) DADS denies renewal of the permit of a medication aide who has been convicted of a criminal offense listed in Texas Health and Safety Code, §250.006(a), or convicted of a criminal offense listed in Texas Health and Safety Code, §250.006(b) within five years before the date DADS receives the renewal application.

(8) DADS denies renewal of the permit of a medication aide who is listed as unemployable on the EMR.

(9) Home health medication aide permit renewal procedures are as follows.

(A) At least 30 days before the expiration date of a permit, DADS sends to the medication aide at the address in DADS records notice of the expiration date of the permit and the amount of the renewal fee due and a renewal form that the medication aide must complete and return with the required renewal fee.

(B) The renewal form must include the preferred mailing address of the medication aide and information on certain misdemeanor and felony convictions. It must be signed by the medication aide.

(C) DADS issues a renewal permit to a medication aide who has met all requirements for renewal.

(D) DADS does not renew a permit if the medication aide does not complete the required seven-hour continuing education requirement. Successful completion is determined by the student's instructor. An individual who does not meet the continuing education requirement must complete a new program, application, and examination in accordance with the requirements of this section.

(E) DADS does not renew a permit if renewal is prohibited by the Texas Education Code, §57.491, concerning defaults on guaranteed student loans.

(F) If a medication aide fails to timely renew his or her permit because the medication aide is or was on active duty with the armed forces of the United States of America serving outside the State of Texas, the medication aide may renew the permit pursuant to this subparagraph.

(i) Renewal of the permit may be requested by the medication aide, the medication aide's spouse, or an individual having power of attorney from the medication aide. The renewal form must include a current address and telephone number for the individual requesting the renewal.

(ii) Renewal may be requested before or after the expiration of the permit.

(iii) A copy of the official orders or other official military documentation showing that the medication aide is or was on active military duty serving outside the State of Texas must be filed with DADS along with the renewal form.

(iv) A copy of the power of attorney from the medication aide must be filed with DADS along with the renewal form if the individual having the power of attorney executes any of the documents required in this subparagraph.

(v) A medication aide renewing under this subparagraph must pay the applicable renewal fee.

(vi) A medication aide is not authorized to act as a home health medication aide after the expiration of the permit unless and until the medication aide actually renews the permit.

(vii) A medication aide renewing under this subparagraph is not required to submit any continuing education hours.

(10) A person whose permit has expired for not more than two years may renew the permit by submitting to DADS:

(A) the permit renewal form;

(B) all accrued renewal fees;

(C) proof of having earned, during the expired period, seven hours in an approved continuing education program for each year or part of a year that the permit has been expired; and

(D) proof of having earned, before expiration of the permit, seven hours in an approved continuing education program as required in paragraph (5) of this subsection.

(11) A permit that is not renewed during the two years after expiration may not be renewed.

(12) DADS issues notices of permit renewal approval, disapproval, or deficiency must be in accordance with subsection (q) of this section.

(m) Changes.

(1) A medication aide must notify DADS within 30 days after changing his or her address or name.

(2) DADS replaces a lost, damaged, or destroyed permit upon receipt of a completed duplicate permit request form and permit replacement fee.

(n) Fees.

(1) The schedule of fees is:

(A) combined permit application and examination fee--$25;

(B) renewal fee--$15; and

(C) permit replacement fee--$5.00.

(2) All fees are nonrefundable.

(3) An applicant or home health medication aide must pay the required fee by cashier's check or money order made payable to the Department of Aging and Disability Services. All fees are nonrefundable, except as provided by Texas Government Code, Chapter 2005.

(o) Training program requirements.

(1) An educational institution accredited by the Texas Workforce Commission or Texas Higher Education Coordinating Board that desires to offer a training program must file an application for approval on a DADS form. Programs sponsored by state agencies for the training and preparation of its own employees are exempt from the accreditation requirement. An approved institution may offer the training program and a continuing education program.

(A) All signatures on DADS forms and supporting documentation must be originals.

(B) The application includes:

(i) the anticipated dates of the program;

(ii) the location(s) of the classroom course(s);

(iii) the name of the coordinator of the program;

(iv) a list that includes the address and telephone number of each instructor and any other person responsible for the conduct of the program; and

(v) an outline of the program content and curriculum if the curriculum covers more than DADS established curricula.

(C) DADS may conduct an inspection of the classroom site.

(D) DADS sends notice of approval or proposed disapproval of the application to the program within 30 days of the receipt of a complete application. If the application is proposed to be disapproved due to noncompliance with the requirements of the Texas Health and Safety Code, Chapter 142, Subchapter B, or of this chapter, the reasons for disapproval are given in the notice.

(E) An applicant may request a hearing on a proposed disapproval in writing within ten days of receipt of the notice of the proposed disapproval. The hearing must be in accordance with subsection (r) of this section and the Administrative Procedure Act, Texas Government Code, Chapter 2001. If no request is made, the applicant is deemed to have waived the opportunity for a hearing, and the proposed action may be taken.

(2) The program includes, but is not limited to, the following instruction and training:

(A) procedures for preparation and administration of medications;

(B) responsibility, control, accountability, storage, and safeguarding of medications;

(C) use of reference material;

(D) documentation of medications in the client's clinical records, including PRN medications;

(E) minimum licensing standards for agencies covering pharmaceutical service, nursing service, and clinical records;

(F) federal and state certification standards for participation under the Social Security Act, Title XVIII (Medicare), pertaining to pharmaceutical service, nursing service, and clinical records;

(G) lines of authority in the agency, including agency personnel who are immediate supervisors;

(H) responsibilities and liabilities associated with the administration and safeguarding of medications;

(I) allowable and prohibited practices of a medication aide in the administration of medication;

(J) drug reactions and side effects of medications commonly administered to home health clients;

(K) instruction on universal precautions; and

(L) the provisions of this chapter.

(3) The program consists of 140 hours in the following order: 100 hours of classroom instruction and training, 20 hours of return skills demonstration laboratory, ten hours of clinical experience including clinical observation and skills demonstration under the supervision of an RN in an agency, and ten more hours in the return skills demonstration laboratory. A classroom or laboratory hour is 50 minutes of actual classroom or laboratory time.

(A) Class time will not exceed four hours in a 24-hour period.

(B) The completion date of the program must be a minimum of 60 days and a maximum of 180 days from the starting date of the program.

(C) Each program must follow the curricula established by DADS.

(4) At least seven days before the commencement of each program, the coordinator must notify DADS in writing of the starting date, the ending date, the daily hours of the program, and the projected number of students.

(5) A change in any information presented by the program in an approved application including, but not limited to, location, instructorship, and content must be approved by DADS before the program's effective date of the change.

(6) The program instructors of the classroom hours must be an RN and registered pharmacist.

(A) The nurse instructor must have a minimum of two years of full-time experience in caring for the elderly, chronically ill, or pediatric clients or been employed full time for a minimum of two years as an RN with a home and community support services agency. An instructor in a school of nursing may request a waiver of the experience requirement.

(B) The pharmacist instructor must have a minimum of one year of experience and be currently employed as a practicing pharmacist.

(7) The coordinator must provide clearly defined and written policies regarding each student's clinical experience to the student, the administrator, and the supervising nurse of the agency used for the clinical experience.

(A) The clinical experience must be counted only when the student is observing or involved in functions involving medication administration and under the direct, contact supervision of an RN.

(B) The coordinator is responsible for final evaluation of the student's clinical experience.

(8) Upon successful completion of the program, each program issues to each student a certificate of completion, including the program's name, the student's name, the date of completion, and the signature of the program coordinator.

(9) Within 15 days after completion of the course, each program must inform DADS on the DADS class roster form of the satisfactory completion for each student.

(p) Continuing education. The continuing education training program is as follows.

(1) The program must consist of at least seven clock hours of classroom instruction.

(2) The instructor must meet the requirements in subsection (o)(6) of this section.

(3) Each program must follow the curricula established by DADS.

(4) Within 15 days after completion of the course, each program must inform DADS on the DADS class roster form of the name of each medication aide who has completed the course.

(q) Processing procedures. DADS complies with the following procedures in processing applications of home health medication aide permits and renewal of permits.

(1) The following periods of time apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are:

(A) letter of acceptance of an application for a home health medication aide permit--14 days; and

(B) letter of application or renewal deficiency--14 days.

(2) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial include notification of proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. An application is not considered complete until the required documentation and fee have been submitted by the applicant. The time periods are as follows:

(A) the issuance of an initial permit--90 days;

(B) the letter of denial for a permit--90 days; and

(C) the issuance of a renewal permit--20 days.

(3) In the event an application is not processed in the time period stated in paragraphs (1) and (2) of this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. Request for reimbursement is made to the Home Health Medication Aide Permit Program. If the director of the Home Health Medication Aide Permit Program does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(4) Good cause for exceeding the time period exists if the number of applications for initial home health medication aide permits and renewal permits exceeds by 15 percent or more the number of applications processed in the same calendar quarter of the preceding year; another public or private entity relied upon by DADS in the application process caused the delay; or any other condition exists giving DADS good cause for exceeding the time period.

(5) If a request for reimbursement under paragraph (3) of this subsection is denied by the director of the Home Health Medication Aide Permit Program, the applicant may appeal to the DADS commissioner for a timely resolution of any dispute arising from a violation of the time periods. The applicant must give written notice to the DADS commissioner that the applicant requests full reimbursement of all fees paid because the application was not processed within the applicable time period. The applicant must mail the reimbursement request to Texas Department of Aging and Disability Services, John H. Winters Human Services Complex, 701 W. 51st St., P.O. Box 149030, Austin, Texas 78714-9030. The director of the Home Health Medication Aide Permit Program must submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period to the DADS commissioner. The DADS commissioner provides written notice of the commissioner's decision to the applicant and the director of the Home Health Medication Aide Permit Program. An appeal is decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, DADS reimburses, in full, all fees paid in that particular application process.

(r) Denial, suspension, or revocation.

(1) DADS may deny, suspend, emergency suspend, or revoke a permit or program approval if the medication aide or program fails to comply with any provision of the Texas Health and Safety Code, Chapter 142, Subchapter B, or this chapter.

(2) DADS may also take action under paragraph (1) of this subsection for fraud, misrepresentation, or concealment of material fact on any documents required to be submitted to DADS or required to be maintained or complied by the medication aide or program pursuant to this chapter.

(3) DADS may suspend or revoke an existing permit or program approval or disqualify a person from receiving a permit or program approval because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a home health medication aide or training program. In determining whether a conviction directly relates, DADS considers the elements set forth in Texas Occupations Code §55.022 and §55.023.

(4) If DADS proposes to deny, suspend, or revoke a home health medication aide permit or to rescind a home health medication aide program approval, DADS notifies the medication aide or home health medication aide program by certified mail, return receipt requested, of the reasons for the proposed action and offers the medication aide or home health medication aide program an opportunity for a hearing.

(A) The medication aide or home health medication aide program must request a hearing within 15 days after receipt of the notice. Receipt of notice is presumed to occur on the tenth day after the notice is mailed to the last address known to DADS unless another date is reflected on a United States Postal Service return receipt.

(B) The request must be in writing and submitted to the Department of Aging and Disability Services, Medication Aide Program, Mail Code E-416, P.O. Box 149030, Austin, Texas 78714-9030.

(C) If the medication aide or home health medication aide program does not request a hearing, in writing, 15 days after receipt of the notice, the medication aide or home health medication aide program is deemed to have waived the opportunity for a hearing and the proposed action is taken.

(5) DADS may suspend a permit to be effective immediately when the health and safety of persons are threatened. DADS notifies the medication aide of the emergency action by certified mail, return receipt requested, or personal delivery of the notice and of the effective date of the suspension and the opportunity for the medication aide to request a hearing.

(6) All hearings are governed by to Texas Government Code, Chapter 2001, and Texas Administrative Code, Title 1, §§357.481 - 357.490.

(7) If the medication aide or program fails to appear or be represented at the scheduled hearing, the medication aide or program has waived the right to a hearing and the proposed action is taken.

(8) If DADS suspends a home health medication aide permit, the suspension remains in effect until DADS determines that the reason for suspension no longer exists, revokes the permit, or determines not to renew the permit. DADS investigates before making a determination.

(A) During the time of suspension, the suspended medication aide must return the permit to DADS.

(B) If a suspension overlaps a renewal date, the suspended medication aide may comply with the renewal procedures in this chapter; however, DADS does not renew the permit until DADS determines that the reason for suspension no longer exists.

(9) If DADS revokes or does not renew a permit, a person may reapply for a permit by complying with the requirements and procedures in this chapter at the time of reapplication.

(A) DADS may refuse to issue a permit if the reason for revocation or nonrenewal continues to exist.

(B) When a permit is revoked or not renewed, a medication aide must immediately return the permit to DADS.

§95.129. Alternate Licensing Requirements for Military Service.

(a) Fee waiver based on military experience.

(1) DADS waives the combined permit application and examination fee described in §95.109(c)(1)(A) of this chapter (relating to Application Procedures) and §95.128(n)(1)(A) of this chapter (relating to Home Health Medication Aides) and the permit application fee described in §95.125(f)(1) of this chapter (relating to Requirements for Corrections Medication Aides) for an applicant if DADS receives and approves a request for a waiver of fees from the applicant in accordance with this subsection.

(2) To request a waiver of fees under this subsection, an applicant must submit a written request for a waiver with the applicant's application for a permit submitted to DADS in accordance with this section. The applicant must include with the request:

(A) documentation of the applicant's status as a military service member or military veteran that is acceptable to DADS; and

(B) documentation of the type and dates of the service, training, and education the applicant received and an explanation as to why the applicant's military service, training or education substantially meets all of the requirements for a permit under this chapter.

(3) Documentation of military status that is acceptable to DADS includes:

(A) for status as a military service member, a copy of a current military service order issued to the applicant by the armed forces of the United States, the State of Texas, or another state; and

(B) for status as a military veteran, a copy of a military service discharge order issued to the applicant by the armed forces of the United States, the State of Texas, or another state.

(4) If DADS requests additional documentation, the applicant must submit the requested documentation.

(5) DADS approves a request for a waiver of fees submitted in accordance with this subsection if DADS determines that the applicant is a military service member or a military veteran and the applicant's military service, training, or education substantially meets all of the requirements for licensure under this chapter.

(b) Fee waiver based on reciprocity.

(1) DADS waives the combined permit application and examination fee described in §95.109(c)(1)(A) of this chapter and §95.128(n)(1)(A) of this chapter and the permit application fee described in §95.125(f)(1) of this chapter for an applicant if DADS receives and approves a request for a waiver of fees from the applicant in accordance with this subsection.

(2) To request a waiver of the fee under this subsection, an applicant must include a written request for a waiver of the fee with the applicant's application that is submitted to DADS in accordance with §95.128(h) of this chapter. The applicant must include with the request documentation of the applicant's status as a military service member, military veteran, or military spouse that is acceptable to DADS.

(3) Documentation of military status that is acceptable to DADS includes:

(A) for status as a military service member, a copy of a current military service order issued to the applicant 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 applicant 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 applicant by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the applicant's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If DADS requests additional documentation, the applicant must submit the requested documentation.

(5) DADS approves a request for a waiver of the fee submitted in accordance with this subsection if DADS determines that:

(A) the applicant holds a license, registration, certificate, or permit as a medication aide in good standing in another jurisdiction with licensing requirements substantially equivalent to or that exceed the requirements for a permit under this chapter; and

(B) the applicant is a military service member, a military veteran, or a military spouse.

(c) Additional time for permit renewal.

(1) DADS gives a medication aide an additional two years to complete the permit renewal requirements described in §95.115 of this chapter (relating to Permit Renewal), if DADS receives and approves a request for additional time to complete the permit renewal requirements from a medication aide in accordance with this subsection.

(2) To request additional time to complete permit renewal requirements, a medication aide must submit a written request for addi-

tional time to DADS before the expiration date of the medication aide's permit. The medication aide must include with the request documentation of the medication aide's status as a military service member that is acceptable to DADS. Documentation as a military service member that is acceptable to DADS includes a copy of a current military service order issued to the medication aide by the armed forces of the United States, the State of Texas, or another state.

(3) If DADS requests additional documentation, the medication aide must submit the requested documentation.

(4) DADS approves a request for two additional years to complete permit renewal requirements submitted in accordance with this subsection if DADS determines that the medication aide is a military service member, except DADS does not approve a request if DADS granted the medication aide a previous extension and the medication aide has not completed the permit renewal requirements during the two-year extension period.

(5) If a medication aide does not submit the written request described by paragraph (2) of this subsection before the expiration date of the medication aide's permit, DADS will consider a request after the expiration date of the permit if the medication aide establishes to the satisfaction of DADS that the request was not submitted before the expiration date of the medication aide's permit because the medication aide was serving as a military service member at the time the request was due.

(d) Renewal of expired permit.

(1) DADS renews an expired permit if DADS receives and approves a request for renewal from a former medication aide in accordance with this subsection.

(2) To request renewal of an expired permit, a former medication aide must submit a written request with a permit renewal application within five years after the former medication aide's permit expired. The former medication aide must include with the request documentation of the former medication aide's status as a military service member, military veteran, or military spouse that is acceptable to DADS.

(3) Documentation of military status that is acceptable to DADS includes:

(A) for status as a military service member, a copy of a current military service order issued to the former medication 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 medication 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 medication 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 medication aide's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If DADS requests additional documentation, the former medication aide must submit the requested documentation.

(5) DADS approves a request for renewal of an expired permit submitted in accordance with this subsection if DADS determines that:

(A) the former medication aide is a military service member, military veteran, or military spouse;

(B) the former medication aide has not committed an offense listed in Texas Health and Safety Code §250.006(a) and has not committed an offense listed in Texas Health and Safety Code §250.006(b) during the five years before the date the former medication aide submitted the initial permit application;

(C) the former medication aide is not listed on the EMR; and

(D) the former medication aide is not listed on the NAR.

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 12, 2016.

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Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 809. CHILD CARE SERVICES

The Texas Workforce Commission (Commission) adopts amendments to the following sections of Chapter 809, relating to Child Care Services, *without* changes, as published in the June 17, 2016, issue of the *Texas Register* (41 TexReg 4394):

Subchapter B. General Management, §§809.13, 809.15 - 809.17

Subchapter C. Eligibility for Child Care Services, §§809.42 - 44, 809.46, 809.48, 809.49, 809.53

Subchapter D. Parent Rights and Responsibilities, §§809.72, 809.74, 809.75

Subchapter E. Requirements to Provide Child Care, §809.95

Subchapter F. Fraud Fact-Finding and Improper Payments, §809.113,§809.115

The Texas Workforce Commission (Commission) adopts amendments to the following sections of Chapter 809, relating to Child Care Services, *with* changes, as published in the June 17, 2016, issue of the *Texas Register* (41 TexReg 4394):

Subchapter A. General Provisions, §809.2

Subchapter B. General Management, §809.19, §809.20

Subchapter C. Eligibility for Child Care Services, §§809.41, 809.45, 809.47, 809.50, 809.51, 809.54

Subchapter D. Parent Rights and Responsibilities, §§809.71, 809.73, 809.78

Subchapter E. Requirements to Provide Child Care, §§809.91 - 809.94

Subchapter F. Fraud Fact-Finding and Improper Payments, §§809.111, 809.112, 809.117

The Commission adopts the following new section to Chapter 809, relating to Child Care Services, *without* changes, as published in the June 17, 2016, issue of the *Texas Register* (41 TexReg 4394):

Subchapter C. Eligibility for Child Care Services, §809.52

The Commission adopts the repeal of the following sections of Chapter 809, relating to Child Care Services, *without* changes, as published in the June 17, 2016, issue of the *Texas Register* (41 TexReg 4394):

Subchapter C. Eligibility for Child Care Services, §809.55

Subchapter D. Parent Rights and Responsibilities, §809.76, §809.77

Subchapter F. Fraud Fact-Finding and Improper Payments, §809.116

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 809 rule change is to amend the Commission's Child Care Services rules to address changes resulting from the Child Care and Development Block Grant Act (CCDBG Act) of 2014. The adopted amendments to Chapter 809 also include, where appropriate, changes in rule language based on the Notification of Proposed Rulemaking (NPRM) issued December 24, 2015, by the U.S. Health and Human Services Administration for Children and Families.

The CCDBG Act authorizes the federal Child Care and Development Fund (CCDF), which is the primary federal funding source for providing child care subsidy assistance to low-income families and for improving the quality of care for all children. The Texas Workforce Commission (Agency) is the CCDF Lead Agency in Texas. The CCDF program is administered by the 28 Local Workforce Development Boards (Boards). Additionally, the Texas Department of Family and Protective Services (DFPS) is responsible for administering the health and safety requirements of the CCDF program.

On November 19, 2014, President Obama signed the CCDBG Act of 2014, reauthorizing the CCDBG Act for the first time since 1996. The new law makes significant changes to the CCDF program, designed to promote children's healthy development and safety, improve the quality of child care, and provide support for parents who are working or are in training or education.

The primary purpose of the Commission's amendments to Chapter 809 is to implement the following changes to the CCDF program resulting from the CCDBG Act of 2014:

Twelve-Month Eligibility Period

The CCDBG Act of 2014 added a 12-month eligibility and redetermination period requirement for children determined eligible for subsidized child care. This change to the CCDF program is designed to provide more stable assistance to families, protection for working families, and increased opportunities for children to remain in child care services.

CCDBG Act §658E(c)(2)(N)(i) and (ii) require states to demonstrate in the CCDF State Plan that after initial eligibility, each child who receives assistance will be considered to meet all eligibility requirements for such assistance and will receive such assistance for not fewer than 12 months before the state or designated local entity redetermines the eligibility of the child. The 12-month eligibility period applies regardless of changes in income--as long as income does not exceed the federal threshold of 85 percent of the state median income (SMI)--or temporary changes in participation in work, training, or educational activities.

Therefore, a state shall not terminate assistance prior to the end of the 12-month period if the family experiences a temporary job loss or temporary change in participation in a training or educational activity.

Although the CCDBG Act requires a period of 12-month minimum eligibility and receipt of child care services prior to redetermination, §658E(c)(2)(N)(iii) allows states the option to terminate eligibility due to a permanent (nontemporary) change in work, training, or education. However, the CCDBG Act requires that prior to terminating a subsidy, the state must continue to provide child care assistance for a period of at least three months to allow parents to engage in job search, resume work, or attend an educational or training program as soon as possible.

Parent Share of Cost during the 12-Month Eligibility Period

To support continued care throughout the 12-month eligibility period, NPRM §98.21(a)(3):

--prohibits states from increasing the parent share of cost during the 12-month eligibility period, regardless of increases in the family income; and

--requires that states act upon information provided by the parent that would result in a reduction in the parent share of cost.

NPRM §98.45(k)(2) requires that the parent share of cost be based on income and the size of the family and may be based on other factors as appropriate, but may not be based on the cost of care or amount of the subsidy payment.

Income Calculation to Consider Irregular Income Fluctuations

CCDBG Act §658E(c)(2)(N)(i)(II) requires that states take into consideration irregular fluctuations of earnings when calculating income for eligibility. NPRM §98.21(c) further clarifies this requirement by adding that the calculation of income policies ensure that temporary increases in income, "including temporary increases that result in monthly income exceeding 85 percent of SMI (calculated on a monthly basis), do not affect eligibility or family co-payments."

Graduated Phaseout of Eligibility

Where a Lead Agency or designated local agency has established an initial eligibility threshold below 85 percent of SMI, CCDBG Act §658E(c)(2)(N)(iv) requires Lead Agencies to have a "Graduated Phaseout of Eligibility" that includes policies and procedures to continue child care assistance at the time of redetermination for children of parents who are working or attending a job training or educational program and whose income has risen above the Lead Agency's initial income eligibility threshold to qualify for assistance but remains at or below 85 percent of SMI.

Priority and Eligibility for Children Experiencing Homelessness

CCDBG Act §650E(3)(B)(i) and NPRM §98.46(a)(3) and §98.51 require states to give priority for services to children experiencing homelessness. NPRM §98.2 defines a "child experiencing

homelessness" as a child meeting the definition of homelessness under the McKinney-Vento Homelessness Act of 1987 (McKinney-Vento Act).

The NPRM preamble clarifies that Lead Agencies have flexibility in how they offer priority to these populations, including by prioritizing enrollment, waiving copayments, paying higher rates for access to higher-quality care, or using grants or contracts to reserve slots for priority populations.

Additionally, the CCDBG Act and the NPRM require that state procedures permit enrollment (after an initial eligibility determination) of children experiencing homelessness while required documentation is being obtained.

Attendance and Provider Reimbursements

CCDBG Act §658E(c)(2)(S) and NPRM §98.45(m) require implementation of provider payment practices that:

--align with generally accepted payment practices for children who do not receive CCDF funds; and

--support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences.

Consumer Education Information

CCDBG Act §658E(c)(2)(E) and NPRM §98.33 require that states collect and disseminate, through a consumer-friendly and easily accessible website, consumer education information to parents of eligible children, the general public, and, where applicable, providers regarding:

--availability of the full diversity of child care services;

--quality of providers;

--state processes for licensing, conducting background checks, and monitoring child care providers;

--other programs for which families that receive child care services may be eligible;

--research and best practices concerning children's development; and

--state policies regarding social-emotional behavioral health of children.

Additionally, NPRM §98.33(d) requires that parent consumer education include information on:

--licensing compliance information for the provider selected by the parent;

--how to submit a complaint regarding a child care provider;

--how to contact community resources that assist parents in locating quality child care; and

--how CCDF subsidies are designed to promote equal access to the full range of child care providers.

CCDBG Act §658E(c)(2)(E) also requires that Lead Agencies provide eligible parents with information on existing resources and other services in the state that conduct developmental screening and provide referrals and services, when appropriate, for children eligible for subsidized child care, including:

--the Medicaid Early and Periodic Screening, Diagnosis, and Treatment program; and

--the Early Childhood Intervention (ECI) and Preschool Program for Children with Disabilities developmental screening services.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts the following amendments to Subchapter A:

§809.2. Definitions

Attending a Job Training or Educational Program

Consistent with CCDBG Act §658E(c)(2)(N)(i) - (ii), the definition of "attending a job training or educational program" is amended to clarify that the requirement in the definition that the individual be making progress toward successful completion of the program as determined by the Board, is only applied at the parent's 12-month redetermination.

Consistent with the CCDBG Act, care cannot be discontinued during the 12-month eligibility period for failure to make progress toward completion of an education or training program. However, the NPRM allows additional eligibility requirements at the 12-month redetermination period. Boards must ensure that the parent is making progress toward completion of the program, as determined by the Board, when redetermining eligibility for continued care, but are prohibited from making this a condition of eligibility at the parent's initial eligibility determination. When developing policies and procedures for determining if the parent is making progress toward completion of the program, the Commission cautions against relying solely on the parent's grade point average (GPA), particularly one semester's GPA. If a Board uses the GPA, the Commission encourages Boards to establish a minimum threshold that would demonstrate if a parent has consistently failed to complete coursework during the eligibility period.

The requirement in the definition that the individual must be considered by the program to be officially enrolled in and meeting the attendance requirements of the program is retained without change because enrollment and attendance in the program should be maintained throughout the 12-month eligibility period. Discontinuing care due to a nontemporary cessation of attendance in a training or education activity during the 12-month eligibility period is addressed in §809.51(b).

As described in amended §809.73, parents are required to report items that impact a family's eligibility during the 12-month eligibility period. Boards may develop procedures for confirming continued enrollment and attendance during the 12-month eligibility period, including requesting that education institutions and training providers confirm enrollment at each semester and the resumption of training classes in order to determine that the parent has not had a nontemporary cessation of education or training activities.

The Commission notes that the language in §809.41 regarding Board policies for child care during education, including time limits or eligibility based on the type of education pursued by the parent, is not changed by these amendments.

A Child Experiencing Homelessness

Consistent with NPRM §98.2, §809.2 is amended to add the definition for a "child experiencing homelessness" as a child meeting the definition of homeless pursuant to the McKinney-Vento Act.

Child with Disabilities

The definition of a "child with disabilities" is amended to align with the definition under §504 of the Rehabilitation Act of 1973.

Family

The definition of a "family" is amended to mirror the Workforce Innovation and Opportunity Act (WIOA) definition of a family. The intent of this change is to clarify, consistent with current practice for both the child care and WIOA programs, that the individuals in a family are "living in a single household." Additionally, consistent with WIOA, the definition of married individuals includes "common-law" marriages. Consistent with the WIOA program guidelines, written attestation must be obtained from both parties affirming the common-law marriage.

Improper Payments

The definition of "improper payments" is amended to align with the current definition of an improper payment in CCDF regulation §98.100(d). The amended §809.2(11) defines an improper payment as:

Any payment of CCDF grant funds that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements governing the administration of CCDF grant funds and includes:

--to an ineligible recipient;

--for an ineligible service;

--for any duplicate payment; and

--for services not received.

Regulated Child Care Provider

The definition of a "regulated child care provider" is amended to remove providers licensed by the Texas Department of State Health Services (DSHS) as a youth day camp as eligible providers of subsidized child care services.

CCDBG Act §658H and NPRM §98.43 require that states have in effect "requirements, policies, and procedures to require and conduct criminal background checks for child care staff members of all licensed, regulated, or registered child care providers and all providers eligible to deliver services." These requirements include a Federal Bureau of Investigation (FBI) fingerprint check. Relative providers are exempt from this requirement, which must otherwise be implemented no later than September 30, 2017.

DSHS youth day camps are not subject to DFPS child care licensing and monitoring requirements. DSHS conducts background checks of staff in compliance with state law for youth camps, but unlike the CCDBG Act and NPRM, state law does not require an FBI fingerprint criminal background check for youth day camp staff. Nonetheless, certain youth day camps may be eligible for DFPS to license as child care centers. Therefore, to allow sufficient time for day camps that serve subsidized children to choose to work with DFPS to become licensed, the Commission will not implement this provision until September 30, 2017.

Working

The definition of "working" is amended to remove job search activities from the definition. Child care during periods of cessation of work, job training, or education is addressed in §809.51.

Comment:

One commenter strongly supported the requirement that the parent demonstrate successful progress toward completion of an education program only be applied at the 12-month redetermination date.

Response:

The Commission appreciates the comment.

Comment:

Commenters requested that the requirement for the parent to be making progress toward successful completion of the education program be applied at initial eligibility if the parent is already enrolled in an education or job training program.

Response:

Past performance in an education or training program should not be considered in initial eligibility for child care. The parent's progress toward completion of the program should only be based on the performance while the parent is receiving child care, as the lack of stable child care may have been a contributing factor to the parent's inability to work toward successful completion of the education or training activity.

Comment:

Commenters requested that the criteria for determining if a parent is making progress toward successful completion of an education and/or training program be consistent across the state. The commenters stated that allowing various standards in the state leads to confusion when a parent moves from one local workforce development area (workforce area) to another. One commenter stated that there should not be more than one way to define the completion of a college course (i.e., grade point average) and that individual Boards should not have differing criteria to determine the extent of progress. Parents deserve to have equal access to child care assistance regardless of where they live or attend school.

Response:

The Commission understands the concerns; however, the Commission believes that this standard should remain a local decision based on local needs and factors specific to education and training programs in the workforce area. Local Workforce Development Boards (Boards) are in the best position, based on their knowledge of and experience with local training and education programs, to make policies regarding the criteria for determining whether the parent is making progress toward successful completion of the program.

Comment:

Commenters requested that if a parent is officially enrolled in the training or education program and meeting the program's attendance requirements, that should be sufficient documentation for a Board to determine that the parent is making progress toward program completion.

Response:

Boards have the flexibility within the rule to determine that being enrolled in and meeting attendance standards of the program would meet the Board standard for making progress toward completion of the program.

Comment:

A commenter requested clarification as to whether the parent would be eligible for the three-month continued care (described

in §809.51) once the Board determines that the minimum threshold for making progress has not been met.

Response:

The requirement that the parent is making successful progress toward completion of the program is only applied at the 12-month eligibility redetermination. If the parent is determined as not meeting this requirement at redetermination, then the parent is not eligible for care for the next eligibility period (unless the parent meets other eligibility requirements regarding participation in work activities). The three-month period of continued care does not apply to parents who do not meet the eligibility requirements at the 12-month eligibility redetermination.

Comment:

One commenter supported the change to the definition of a "child with disabilities" to include the language change from "incapable of performing" to "substantially limits." The commenter also supported expanding the definition to include children who may not have a formal diagnosis but are "regarded to have a disability," as there are many reasons why a child may not have a formal diagnosis (e.g., the family does not have access to regular medical care) but would certainly benefit from additional support services.

Response:

The Commission appreciates the comment.

Comment:

One commenter requested that acceptable forms of documentation to verify impairments listed in the definition of a child with disabilities (if required) be specified in the Child Care Services Guide.

Response:

The definition is based on §504 of the Rehabilitation Act of 1973. The Agency will review documentation related to this Act and update the Child Care Services Guide accordingly.

Comment:

Commenters requested that the definition of a "family" align more closely with the WIOA definition, specifically to include the statement that the individuals are "living in a single household," as this would clarify the current practice in child care and match the WIOA definition. Another commenter stated that aligning the definitions would increase opportunities to streamline Board eligibility determination processes.

Response:

The Commission agrees and has modified the definition of a "family" to mirror, but not replicate, the definition of a family in WIOA. Consistent with the current child care practice of including all household dependents in the family, the amended rule language modifies the WIOA definition to include all household dependents, not just the children, in the definition of a family.

Comment:

Several commenters requested clarification regarding the inclusion of payments "for services not received" in the definition of "improper payments." The commenters stated that this appears to be in conflict with §809.93(b), which states that providers are reimbursed on authorized enrollment, not attendance. The commenters stated that "services not delivered" may be read to include payments for absences, which is required under §809.93(b).

Response:

Payment for enrollment is a requirement in the rule, and payment for absences is allowed as long as the child remains enrolled under a valid authorization for care. The Commission clarifies that the term "services not received" in the definition of "improper payments" is intended to cover instances in which payment is made to a provider without a valid authorization and care was not provided. Further, the definition of improper payment is also intended to apply to quality improvement activities. It would be considered an improper payment if payment is made for a quality activity, such as professional development or equipment, and the services or equipment were not delivered.

Comment:

One commenter supported the new definition of "child experiencing homelessness."

Response:

The Commission appreciates the comment.

Comment:

Several commenters requested that the rule language for a "child experiencing homelessness" include the statutory language from the McKinney-Vento Act for the definition of a child experiencing homelessness. The commenters stated that this would ensure consistent implementation of the definition. One commenter also requested that acceptable forms of documentation to verify compliance with the definition should be included in the Child Care Services Guide.

Response:

The Child Care Services Guide will provide a link to the pertinent section of the McKinney-Vento Act, but actual language from that statute will not be included in rule. Doing so would require keeping the Texas Administrative Code (TAC) updated with any changes to the McKinney-Vento Act. Providing a link to the most current citation will ensure that the most current definition is used.

Additional guidance regarding the definition of homelessness and determining eligibility for children experiencing homelessness will be provided in the Child Care Services Guide.

Comment:

One commenter strongly supported the removal of youth day camp providers from the definition of a "regulated child care provider," and, therefore, being ineligible to serve subsidized children. The commenter commends the state on providing additional support and an extended timeline for these providers to become licensed through DFPS.

The commenter stated that ensuring the safety of all children, regardless of age and placement, by requiring an FBI fingerprint criminal background check for youth day camp staff is a responsible state policy. The commenter urges the Commission to consider extending FBI fingerprint criminal background checks to all child care providers, regardless of whether they serve subsidized children.

Response:

The Commission appreciates the comment. The Commission also notes that the CCDBG Act of 2014 requires FBI fingerprint

background checks for all licensed, regulated, or registered child care providers (excluding eligible relatives), not just providers serving subsidized children.

Comment:

One commenter recommended adding definitions for both "temporary" and "nontemporary" regarding parent status changes in work, training, and education activities.

Response:

The Commission declines to make this change. Temporary changes are listed in §809.51(a)(2) and conform to the requirements in the proposed CCDF regulations. Nontemporary changes are clarified in §809.51(b) to be "a loss of work or cessation of attendance at a job training or educational program *that does not constitute a temporary change* in accordance with §809.51(a)(2)." If the status change is not a temporary change listed in §809.51(a)(2), then it would be considered a nontemporary change.

Comment:

One commenter recommended adding a definition for a "job training program," which is part of the eligibility criteria defined in §809.41(a)(3)(B), but is not defined, while the other two criteria--educational programs and working--are defined.

Response:

The Commission points out that "job training program" is defined in §809.2(12).

SUBCHAPTER B. GENERAL MANAGEMENT

The Commission adopts the following amendments to Subchapter B:

§809.13. Board Policies for Child Care Services

Section 809.13 is amended to remove the requirement in subsection (c) for Boards to submit policy modifications, amendments, or new policies to the Commission within two weeks of adopting the policy. This section retains the requirement that Boards submit Board policies to the Commission upon request. The additional requirement to submit changes to policies within a specific time frame is redundant. The Commission makes this change to reduce administrative burden on both Board and Agency staff. Section 809.13 is amended to remove multiple Board policy requirements that no longer apply under the CCDBG Act.

Consistent with the CCDBG Act 12-month eligibility period requirement, §809.13 is amended to remove the requirement for Boards to have a policy on frequency of eligibility determinations, as the frequency is now established under federal law.

Section 809.13 is amended to remove the option for Boards to have a policy to include provider eligibility for nonrelative-listed family homes. CCDBG Act §658E(c)(2)(K) requires annual unannounced inspections of all CCDF-subsidized providers for compliance with health, safety, and fire standards. Relative providers are exempt from this requirement. By state statute, listed family homes are not inspected by DFPS child care licensing (unless there is a report of abuse or neglect at the facility). Therefore, under the CCDBG Act, nonrelative listed family homes are not eligible to provide CCDF-subsidized services.

Section 809.13 is amended to remove the requirement that Boards establish policies for attendance standards in order to be consistent with CCDBG Act §658E(c)(2)(S), which requires that provider reimbursement policies support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences. Attendance standards are established in amended §809.78, and reimbursement policies based on enrollments are established in §809.93.

Section 809.13 is amended to remove the requirement that Boards have procedures for imposing sanctions when a parent fails to comply with the provisions of the parent responsibility agreement (PRA). As explained in the changes to Subchapter D, the PRA is no longer a requirement.

Section 809.13 is amended to remove the requirement that Boards have a policy regarding the mandatory waiting period for reapplying or being placed on the waiting list. As explained in the changes to Subchapter C, the mandatory waiting period is no longer required.

Comment:

One commenter recommended that all of the required Board policies for child care services be removed from the rules and that the Agency standardize all child care rules and provide clear intent and implementation direction. In order to ensure equitable services be available to all parents, regardless of where the parent resides within the state of Texas, the commenter stated that the rules must be standardized and applied consistently across all Board areas.

Response:

The Commission declines this recommendation. The Chapter 809 Child Care Services rules provide for Agency oversight of the program in order to comply with federal and state laws and regulations and to ensure that the rules are applied consistently throughout the state. However, state statute requires that child care services be administered by Boards and requires that the Agency provide Boards with flexibility in administering workforce programs, including child care.

Comment:

One commenter strongly recommended that the Commission retain the requirement that Boards submit policy modifications, amendments, or new policies to the Agency within two weeks of adopting the policy.

The commenter contended that receiving notice of policy modifications after their adoption effectively removes all authority from the Agency to establish consistent standards. Removing a timeline for providing Board policies means that the state may be completely unaware of requirements for regulated child care providers for an extended period of time, including new policies that may be contradictory to federal or state law. Relying on the initiative of an individual Board to report changes or waiting for Agency staff to proactively ask about new policies is an unreliable system for compliance. Contrary to the Commission's interpretation, requiring a two-week standing deadline is not redundant to offering information only upon request.

While the commenter acknowledged there is an administrative responsibility that may be challenging, the risk of allowing inappropriate or possibly noncompliant policies to be implemented on a local level is much greater.

Response:

The Commission disagrees that receiving notification of policy changes after their adoption removes all authority from the Agency to establish consistent standards.

The Agency and the Agency's Child Care Technical Assistance staff review all Board policies prior to conducting technical assistance site visits. Additionally, the Agency's Subrecipient Monitoring department also reviews Board policies prior to monitoring visits. Agency staff participates in Board meetings, is aware of changes to Board policies as they occur, and responds appropriately and timely if the policies do not comply with Agency rules and policies. These routine activities are sufficient to meet the Agency's oversight responsibilities.

§809.15. Promoting Consumer Education

Section 809.15(b) is amended to clarify that consumer education information includes consumer education information provided on the Board's website.

Section 809.15(b)(4) is amended to remove the requirement that Boards include in consumer education information for parents a description of the school readiness certification system, as the program has been discontinued.

Information on Resources for Developmental Screening

CCDBG Act §658E(c)(2)(E)(ii) requires that states provide eligible parents with information on existing resources and other services in the state that conduct developmental screening and provide referrals to services, when appropriate, for children eligible for subsidized child care regarding:

--the Medicaid Early and Periodic Screening, Diagnosis, and Treatment program; and

--Early Childhood Intervention (ECI) and Preschool Program for Children with Disabilities developmental screening services.

Information on developmental screenings must also include a description of how a family or eligible child care provider can use available resources and services to obtain developmental screenings for children receiving assistance who may be at risk for cognitive or other developmental delays, which may include social, emotional, physical, or linguistic delays.

NPRM §98.33(c) clarifies that the developmental screening information should be made available to parents as part of the intake process and to providers through training and education.

Consistent with CCDBG Act §658E(c)(2)(E)(ii) and NPRM §98.33(c), §809.15(b) is amended to add the requirement, pursuant to CCDBG Act §658E(c)(2)(E)(ii), that Boards include:

--information on resources and services available in the workforce area for conducting developmental screenings and providing referrals to services when appropriate for children eligible for child care services, including the use of:

--the Early and Periodic Screening, Diagnosis, and Treatment program under 42 U.S.C. 1396 et seq.; and

--developmental screening services available under Part B and Part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 et seq.); and

--a link to the Agency's designated child care consumer education website.

The Commission clarifies that Boards are not required to make referrals or to ensure that developmental screenings are conducted. The only requirement is that Boards provide information to parents regarding available local resources and developmental screenings.

Additional information and guidance regarding the manner in which information on developmental screenings is made available will be provided by the Agency through updates to the Child Care Services Guide. Additionally, the Agency is working with statewide training partners regarding making training and education on developmental screenings available to providers.

The Commission also notes that this provision does not affect the rules, policies, and procedures currently in place regarding approval of the inclusion rate pursuant to §809.20(e).

Consumer Education

CCDBG Act §658E(c)(2)(E) and NPRM §98.33 require that states collect and disseminate consumer education information to parents of eligible children, the general public, and, where applicable, providers regarding:

--availability of the full diversity of child care services;

--quality of providers;

--state processes for licensing, conducting background checks, and monitoring child care providers;

--other programs for which families that receive child care services may be eligible;

--research and best practices concerning children's development; and

--state policies regarding social-emotional behavioral health of children.

Additional information and guidance regarding the manner in which consumer education information is made available will be provided by the Agency through updates to the Child Care Services Guide, including guidance on:

--providing licensing compliance information;

--making consumer education information available in printed form; and

--ensuring consumer education information is accessible to both individuals with disabilities and individuals with limited English proficiency.

Additionally, NPRM §98.33(d) requires that parent consumer education include information on:

--licensing compliance information of the provider selected by the parent;

--how to submit a complaint regarding a child care provider;

--how to contact community resources that assist parents in locating quality child care; and

--how CCDF subsidies are designed to promote equal access to the full range of child care providers.

All consumer education required by the final CCDF regulations is available on the Texas Child Care Solutions website at www.texaschildcaresolutions.org.

Section 809.15 is amended to require that Boards provide a link to the Agency's designated child care consumer education website as part of the consumer education information provided to parents.

Comment:

Commenters requested additional information on how referrals for developmental screenings will be made and if a referral

to 2-1-1 Texas would be sufficient. One commenter inquired whether the Agency will be providing the Boards with information on existing resources and services available within the workforce area for developmental screenings.

Response:

The Commission clarifies that there is no requirement that a referral for developmental screening is made. The rule language only requires that information be included in consumer education materials regarding resources and services for conducting developmental screenings, and providing referrals is included in consumer education materials. The information provided to parents will state how the parent can connect with the resources.

The Agency will provide information to Boards in the Child Care Services Guide on procedures for providing information to parents regarding screenings, including links to state websites and the option to provide printed materials. Additional information specific to resources in the workforce area should be provided by the Board.

§809.16. Quality Improvement Activities

Section 809.16 is amended to remove outdated CCDF regulatory citations. The current CCDF regulations are being amended by the U.S. Department of Health and Human Services and the NPRM language has changed citations for quality improvement activities and the use of CCDF for construction. Further, the list of allowable quality activities in the CCDF regulations has been expanded to include quality activities listed in the CCDBG Act. Section 809.16 removes the specific citations list of quality activities, and replaces it with the general reference for CCDF in 45 C.F.R., Part 98.

§809.17. Leveraging Local Resources

Section 809.17 is amended with language moved, without changes, from Subchapter C §809.42(c) related to public entities certifying expenditures for direct child care, as the language is more relevant to the local match process described in §809.17 than to eligibility for child care services described in §809.42(c).

Comment:

One commenter requested additional information on the expectations of how the public entity shall verify that children meet eligibility requirements.

Response:

The Commission notes that there are no changes to the rule provisions. Guidance regarding the requirements for local match is provided in Section C-202-a of the Child Care Services Guide.

§809.19. Assessing the Parent Share of Cost

Parent Share of Cost during the 12-Month Eligibility Period

To support continued care throughout the 12-month eligibility period, NPRM §98.21(a)(3):

--prohibits states from increasing the parent share of cost during the 12-month eligibility period, regardless of increases in the family income; and

--requires that states act upon information provided by the parent that would result in a reduction in the parent share of cost.

Consistent with the NPRM, §809.19(a) is amended to add the requirement that the parent share of cost is assessed only at the following times:

--Initial eligibility determination;

--12-month eligibility redetermination;

--The addition of a child in care;

--Upon a parent's report of a change in income, family size, or number of children in care that would result in a reduced parent share of cost assessment; and

--Upon resumption of work, job training, or education activities following temporary changes described in §809.51(a)(2) and during the three-month continuation of care period described in §809.51(c).

In order to ensure compliance with the requirement in the NPRM that prohibits states from increasing the parent share of cost during the 12-month eligibility period, regardless of increases in the family income, the Commission adds §809.19(a)(1)(D), requiring Boards to ensure that the parent share of cost amount does not increase above the amount assessed at initial eligibility or at the 12-month eligibility redetermination, except upon the addition of a child in care as described in §809.19(a)(1)(C)(iii).

Additionally, the Commission amends §809.19(a)(2)(A) - (B) to clarify that parents participating in Choices or Supplemental Nutrition and Assistance Program Employment and Training (SNAP E&T), as well as a parent in Choices child care at §809.45 or SNAP E&T child care at §809.47, are exempt from the parent share of cost for the 12-month eligibility period.

Basing the Parent Share of Cost on the Cost of Care or Subsidy Amount

NPRM §98.45(k)(2) requires that the parent share of cost be based on income and the size of the family and may be based on other factors as appropriate, but may not be based on the cost of care or amount of the subsidy payment.

Section 809.19 is amended to remove the provision that the assessed parent share of cost must not exceed the Board's maximum reimbursement rate or the provider's published rate, whichever is lower. This provision is contrary to the requirement in the NPRM that the assessed parent share of cost must not be based on the cost of care or the amount of the subsidy payment.

The parent share of cost must only be based on the following factors:

--the family's size and income; and

--may also consider the number of children in care and parent selection of a provider certified by the Texas Rising Star (TRS) program, as described in §809.19(a)(1)(B).

The Commission retains the rule language in §809.19(d) that allows Boards to review the assessed parent share of cost for possible reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. However, this reduction shall not be based on the Board's maximum reimbursement rate or the provider's published rate.

The Commission notes that the current rules at §809.19(d) allow Boards to review the assessed parent share of cost for possible reductions if there are extenuating circumstances that jeopardize a family's self-sufficiency. Extenuating circumstances include unexpected temporary costs such as medical expenses and work-related expenses that are not reimbursed by the employer. The Commission is aware that some Boards may allow a limited number of these reductions during the eligibility period. Such policies are still allowed, but Boards must ensure that the

parent share of cost is reduced any time the parent reports a change in income, family size, or number of children in care that would result in a reduced parent share of cost.

The Commission further notes that amended §809.73 requires that parents report such changes within 14 calendar days of the change. Changes in the parent share of cost should be made at the beginning of the month following the reported change. If the parent does not report the change within that time period, the Board is not required to make the change retroactive from the actual date of the reduction.

The Commission is also aware that some Boards reduce the parent share of cost for a limited period of time during the initial eligibility period in order to assist the parent, particularly newly employed parents, with the parent share of cost. This remains an allowable practice under §809.19(d) regarding a reduction of the assessed parent share of cost. After this initial reduction, the parent share of cost may be regularly assessed based on the family size and income and number of children in care, as required by §809.19(a)(1)(B).

Exemptions for Parents of Children Experiencing Homelessness

CCDBG Act §650E(3)(B)(i) and NPRM §98.46(a)(3) and §98.51 require that states give priority for services to children experiencing homelessness. The NPRM preamble clarifies that Lead Agencies have flexibility as to how they offer priority to these populations, including by prioritizing enrollment, waiving copayments, paying higher rates for access to higher-quality care, or using grants or contracts to reserve slots for priority populations.

Section 809.19(a)(2) is amended to require that parents of a child receiving child care for children experiencing homelessness described in §809.52 be exempt from the parent share of cost.

The Commission emphasizes that pursuant to §809.19(e), the Board or its child care contractor shall not waive the assessed parent share of cost unless the parent is covered by an exemption specified in §809.19(a)(2).

Parent Share of Cost Incentives to Consider Selection of a TRS-Certified Provider

NPRM §98.30(h) includes provisions designed to provide parents with incentives that encourage the selection of high-quality child care without violating parental choice provisions. The NPRM provides states with flexibility in determining what types of incentives to use to encourage parents to choose high-quality providers, including the option to lower the parent share of cost for parents who choose a high-quality provider.

Consistent with NPRM §98.30(h) and to encourage parents to select a TRS-certified provider, and, thus, encourage greater provider participation in the TRS program, the Commission adds §809.19(g) to allow Boards to reduce the assessed parent share of cost amount based on the parent's selection of a TRS-certified provider.

If a Board elects to have such a policy, the policy must ensure that the parent continues to receive the reduction if:

--the TRS provider loses TRS certification; or

--the parent moves or changes employment within the workforce area and no TRS-certified providers are available to meet the needs of the parent's changed circumstances.

However, the policy must also ensure that the parent no longer receives the reduction if the parent voluntarily transfers the child from a TRS-certified provider to a non-TRS-certified provider.

Comment:

Several commenters requested clarification regarding the requirements surrounding reductions in the assessed parent share of cost amount.

Several Boards requested that the reduction of the parent share of cost during a three-month continuation of care period after the nontemporary employment loss be considered a temporary reduction and the parent share of cost be reassessed if the parent resumes activities during the three-month period.

Similarly, several Boards requested to reassess a parent share of cost when the parent resumes activities following a temporary loss of employment. This is not stated in the proposed rule change. Without the ability to reassess the parent share of cost upon gaining new employment or resuming the parent share of cost originally established, the parent share of cost would remain at the reduced amount through the remainder of the eligibility period.

Response:

The Commission has added clarification language at §809.19(a)(1)(C)(v) to allow for a reassessment of the parent share of cost upon the resumption of work, job training, or education activities following temporary changes described in §809.51(a)(2) and following nontemporary changes described in §809.51(c).

However, in order to ensure compliance with the requirement in NPRM that prohibits states from increasing the parent share of cost during the 12-month eligibility period, regardless of increases in the family income, the Commission adds §809.19(a)(1)(D) requiring Boards to ensure that the parent share of cost amount does not increase above the amount assessed at initial eligibility or at the 12-month eligibility redetermination, except upon the addition of a new child in care.

Comment:

Several commenters requested clarification regarding whether or not reductions made for extenuating circumstances are required to be permanent for the remainder of the eligibility period. The commenters recommended that reductions in parent share of cost due to extenuating circumstances in §809.19(d) be temporary and that the parent share of cost return to its previous rate once the extenuating circumstances no longer exist.

Response:

The Commission agrees and has modified the language in §809.19(d) to clarify that the reductions due to extenuating circumstances are temporary and that following the temporary reduction, the parent share of cost amount immediately prior to the temporary reduction shall be reinstated.

Comment:

One commenter suggested that the language in §809.19(a)(1)(C)(iii) regarding the amount added to the parent share of cost upon the addition of a child in care should read "an additional amount for the family" instead of an additional amount "for the child."

Response:

The Commission has modified the language in §809.19(a)(1)(C)(iii) to streamline the rules by stating that the reassessment is done upon the addition of a child in care.

Comment:

Several commenters requested clarification on the parent share of cost reduction based on the parent's selection of a TRS-certified provider. In light of the requirement that the assessed parent share of cost amount cannot increase during the eligibility period, the commenters asked if the reduction would continue if the parent transfers to a non-TRS-certified provider.

Response:

The Commission appreciates the comment and has made changes to the proposed rule language to add §809.19(g) to clarify the requirements for TRS parent share of cost reduction.

The Commission has removed the proposed language that the selection of a TRS provider is a factor in the parent share of cost assessment. Instead, the rule language in §809.19(g) is intended to clarify that the selection of a TRS provider would be, at the Board's option, a reduction of the amount of the parent share of cost assessed in §809.19(a)(1).

The parent would continue to receive the applicable TRS reduction through the end of the eligibility period, if during the 12-month period, the TRS provider selected by the parent loses TRS certification, or the parent moves or changes employment and no TRS providers are available to meet the needs of the parent's changed circumstance.

However, if the parent voluntarily transfers the child from a quality provider to a non-quality provider, then the parent would no longer be eligible for the TRS reduction.

Comment:

As will be discussed in §809.45, regarding Choices child care, and §809.47, regarding SNAP E&T child care, several commenters requested clarification regarding the parent share of cost exemption for parents participating in Choices and SNAP E&T. Commenters suggested ending the exemption from the parent share of cost once the parent stops participating in Choices or SNAP E&T.

Additionally, several commenters requested that the parent share of cost exemption for parents of children experiencing homelessness should end and a parent share of cost be assessed if the parent becomes employed or is otherwise eligible for At-Risk child care, following the initial three-month eligibility period for homeless children.

Response:

Consistent with the NPRM requirement §98.21(a)(3) that prohibits states from increasing the parent share of cost during the 12-month eligibility period, regardless of increases in the family income, the exemption from the parent share of cost for parents in Choices child care at §809.45 and SNAP E&T child care at §809.47 must continue during the 12-month eligibility period.

Accordingly, the Commission has modified §809.19(a)(2)(A) - (B) to clarify that parents participating in Choices or SNAP E&T, as well as parents in Choices child care at §809.45 or SNAP E&T child care at §809.47, are exempt from the parent share of cost. This change clarifies that the parent share of cost exemption is retained throughout the eligibility period, even if the parent's participation in these programs changes.

Similarly, the Commission has also modified §809.19(a)(2)(C) to state that parents with children receiving child care for children experiencing homelessness, as described in §809.52, are exempt from the parent share of cost. This change clarifies that the parent share of cost exemption is retained throughout the eligibility period, even if the child's homelessness status changes.

Comment:

One commenter strongly supported the option for Boards to consider the parent selection of a TRS-certified provider in assessing the parent share of cost. Reducing the parent share of cost, along with increasing the provider's payment rate for selection and participation in the TRS program, are effective strategies to encourage parents to select a TRS-certified provider and to encourage greater provider participation in the TRS program. The commenter encouraged the Commission to consider extending this as a requirement for all Boards. The commenter also strongly urged the Commission to ensure Boards secure funding to set their TRS-certified provider reimbursement rate bonus at a level that accommodates any reduction in the parent share of cost without reducing eligibility or creating a waiting list.

Response:

The Commission appreciates the support. However, the Commission declines to require this of all Boards. The decision to include the TRS parent share of cost reduction should remain a local decision as determined by the Board--taking into consideration the need for such an incentive and the availability of funds at the local level.

Comment:

One commenter recommended that the Commission clarify in the rule language that the Board's consideration of parent selection of a TRS-certified provider result in the reduction of the parent share of cost, as intended by the Commission's rule explanation of NPRM §98.30(h). The current proposed rule language leaves the interpretation of "consider" too vague.

Response:

The Commission appreciates the comment and, as explained previously, the Commission has modified the language and added §809.19(g) to clarify that this is a reduction in the assessed parent share of cost, at the Board's discretion.

Comment:

One commenter disagreed that the selection of a TRS-certified provider as a consideration in the parent share of cost assessment will encourage providers to participate in the TRS program. Providers are required to collect the parent share of cost at the beginning of the month, and reducing the amount collected at the beginning of the month will not encourage providers to become TRS-certified. The commenter recommended that if the parent share of cost is reduced for selecting a TRS provider, then the TRS provider should be reimbursed at the beginning of the month based on the enrollment authorization.

Response:

The Commission's intent is for Boards, at their option, to provide incentives for parents to choose a TRS-certified provider, and, as a result, encourage more providers to become TRS certified in order for the parent to take advantage of this incentive.

The Commission understands the payment issue described by the commenter and notes that amendments to §809.93 change reimbursements from being based on daily attendance to being based on authorized monthly enrollments. The Commission declines to provide reimbursements prior to the delivery of services under that authorization to account for instances in which the authorization may change during the week or month. This is also

consistent with the general principle that reimbursements using public funds occurs following the delivery of services.

Comment:

One commenter requested that the Commission allow Boards to waive the parent share of cost for families at or below 100 percent of the federal poverty guidelines, as allowed under the CCDF regulations. This would align with income limits for Early Head Start and Head Start and would help Boards coordinate with local partners in providing "wraparound care" for families.

Response:

Pursuant to §809.19(e), the Commission has waived the parent share of cost only to parents in an exempted group in §809.19(a)(2). However, the requirement that the parent share of cost be a sliding fee scale based on income and family size is intended to result in the parent share of cost amount starting at a low amount for families with very low incomes and gradually increase as the family moves to higher income ranges for the same family size. Families at or below 100 percent of poverty would have a lower parent share of cost than families at higher income ranges. Additionally, pursuant to §809.19(f), families whose income is calculated to be zero shall have a zero parent share of cost.

Comment:

One commenter did not agree with prohibiting increases in parent share of cost if a parent or family experiences an income increase during the eligibility period.

Response:

The Commission notes that the rule reflects requirements in the NPRM. The intent of the rule is described in the preamble to the NPRM as follows:

The limitation on raising copayments, by protecting the child's benefit level for the minimum 12-month eligibility period, is consistent with the statutory requirement that once deemed eligible, a child shall 'receive such assistance for not less than 12 months.' Raising copayments earlier than the 12-month period could potentially destabilize the child's access to assistance and has the unintended consequence of forcing working parents to choose between advancing in the workplace and child care assistance.

Comment:

Several commenters requested clarification regarding current Board policies that allow for reductions in the parent share of cost based on factors other than the selection of a TRS-certified provider. Specifically, the commenters inquired whether the Boards are allowed to reduce the assessed parent share of cost based on the level of care authorized (e.g., part-day or part-week).

Response:

Pursuant to §809.19(a)(1)(B), the amount of the parent share of cost, including any reduction pursuant to §809.19(a)(1)(C)(iv), due to changes during the eligibility period, is determined by a sliding fee scale based on the family's size and gross monthly income and may also take into consideration the number of children in care. Those are the only factors allowed to determine the amount of the parent share of cost.

Reductions to that assessed amount are only allowed if the reduction is:

--temporary due to extenuating circumstances (§809.19(d)); or

--based on the selection of a TRS-certified provider (§809.19(g)).

NPRM §98.45(k)(2) prohibits the parent share of cost from being based on the cost of care or the subsidy amount. Basing the parent share of cost on the level of services would be considered as basing the parent share of cost on the cost of care or the subsidy amount.

Reductions for "part-day" and "part-week" care do not meet the intent of the NPRM or §809.19(d) (regarding reductions due to extenuating circumstances), as these reductions are based on the level of services, and not based on family income, family size, number of children in care, temporary extenuating circumstances, or the selection of a TRS provider, as required in the rule. Therefore, these reductions are not allowable.

As mentioned in the explanation on the rule changes, the Commission amended §809.19 to remove the provision that the assessed parent share of cost must not exceed the Board's maximum reimbursement rate or the provider's published rate, whichever is lower. This provision is contrary to the requirement in the NPRM that the assessed parent share of cost must not be based on the cost of care or the amount of the subsidy payment.

The Commission acknowledges that this type of reduction was allowed previously; however, upon review of the rules that have been in place, these reductions do not conform to the requirements in the NPRM.

Comment:

Many commenters expressed concerns regarding parents who may fail to pay the parent share of cost as terminating care because the failure to pay the parent share of cost is no longer allowed during the eligibility period. Commenters inquired if Boards may continue to have a policy that limits transfers to another provider if the parent owes a parent share of cost at the current provider. The commenters expressed concerns that parents should be held responsible during the eligibility period for failure to pay the parent share of cost.

Commenters expressed concerns that the only option to enforce the parent share of cost would be to require Boards to have a policy that reimburses the provider, and the parent would not be allowed back into care at the 12-month eligibility redetermination until the amount is repaid.

One Board requested consideration to use a suspension process when parents do not pay their assigned parent share of cost, similar to the suspensions allowed for excessive absences. The Board does not want to pay the parent share of cost to the provider when the parent does not pay, as the Board believes this will be setting a negative precedent. The Board specifically requested to be allowed to withhold a transfer or suspend care until the parent has paid the parent share of cost to the provider in full.

Response:

Boards may prohibit transfers or allow a certain number of transfers if a parent is not current on the parent share of cost, as long as it does not have the effect of terminating care during the 12-month period. A Board cannot terminate care during the eligibility period for a parent's failure to pay the parent share of cost.

Providers should report timely for failure to pay the parent share of cost, and Board child care contractors should work with parents to determine why the payments are not being made and

possibly temporarily reduce the parent share of cost if necessary.

Pursuant to §809.13(c)(3), at their option, Boards may choose to have a policy to reimburse the provider when a parent fails to pay the parent share of cost. Where the Board has such a policy, pursuant to §809.117(d)(3), the Board must recoup the costs at the next eligible determination. Where a parent fails to fully repay the cost, the parent is not eligible until the repayment is made, pursuant to §809.117(e).

To ensure continuity of care for children and to assist working parents with child care, suspensions should only occur in instances in which the parent determines that care is not needed for a temporary amount of time (such as temporary interruptions in activities, or other reasons as determined by the parent that may affect the child's continued attendance). However, failure to pay the parent share of cost is not a reason for the child care contractor to suspend care, as it is not a factor in demonstrating that care is not needed for a temporary amount of time.

As explained in §809.51, regarding care during interruptions in activities, the preamble to the NPRM notes that, consistent with §658E(c)(2)(N)(i) of the CCDBG Act, "during the minimum 12-month eligibility period Lead Agencies also may not end or suspend child care authorization or provider payments due to a temporary change in a parent's work, training, or education status." Consistent with this guidance, a Board or a Board child care contractor cannot suspend a child's care for the parent's failure to pay the parent share of cost.

Comment:

One commenter inquired if a provider is allowed to end enrollment at the provider's facility if a parent fails to pay the parent share of cost and if those practices are in the provider's established policies.

Response:

Yes, a provider may discontinue care at the provider's facility, consistent with established policies related to parents who do not pay for the services provided. However, this must not result in the contractor's termination of the child's eligibility for the subsidy during the 12-month eligibility period.

Comment:

One commenter inquired if a new redetermination is conducted and a new parent share of cost assessed if the parents get married, have a baby, or add a sibling to care.

Response:

Pursuant to §809.42, family eligibility can only be redetermined at the 12-month eligibility period. Changes in family composition or the addition of a child in care are not factors in eligibility redetermination. If the changes result in a change in family size that would result in a reduced parent share of cost, then such reduction must be made. However, the parent share of cost cannot be increased based on the increase in income during the 12-month period. The addition of a new baby or sibling to care would constitute a change to the number of children to which the parent share of cost is applied. Additional guidance on how to apply the parent share of cost for changes in family size amount added for the child will be provided in the Child Care Services Guide.

Comment:

One commenter requested clarification regarding the phrase in the preamble that the parent share of cost may be based on "other factors as appropriate."

Response:

This is CCDF regulatory language quoted in the preamble. In Chapter 809 rules, "other factors as appropriate" are set out in §809.19(a)(1)(B) regarding the number of children in care.

Comment:

One commenter inquired if parents with currently enrolled children will be able to request their parent share of cost to be reduced due to new exclusions of income sources in §809.44. The commenter suggested parents must wait until January 1, 2017, to request a parent share of cost to be reevaluated or until significant status change occurs or the case comes up for review. This will assist Board contractor staff in managing workload. Otherwise, there will be a significant need for overtime in order for all these cases to be processed timely due to the majority of parents who receive some other income besides income received from work.

Response:

The income calculation in §809.44 is used to determine family income at the following points:

--Initial eligibility determination;

--12-month redetermination; and

--When a parent reports a change in income that would result in a lower parent share of cost or result in the family exceeding 85 percent of SMI.

Beginning on October 1, 2016, the new income calculation methodology for continued eligibility and the parent share of cost assessment will be used at the family's scheduled redetermination. Upon the effective date of the rules, parents with children currently enrolled in care may report a change in family income or family size that could result in a reduction of the parent share of cost, and the parent share of cost will be calculated under the new income calculation guidelines. At their discretion, Boards may determine whether to consider a reevaluation of family income or family size as a redetermination. If Boards choose to do so, the requirements of §809.42 apply.

Comment:

One commenter pointed out that the reference to §809.54(c)(1) in the proposed §809.19(a)(2)(D) is incorrect.

Response:

The Commission appreciates the comment and agrees. This was an error in the proposed rules. The reference should be to §809.54(c), as paragraph (1) has been removed from the final rules.

§809.20. Maximum Provider Reimbursement Rates

Section 809.20(b) is amended to remove the requirement that Boards establish enhanced reimbursement rates for preschool-age children at providers that obtain school readiness certification, as the school readiness certification system has been discontinued.

Section 809.20(c) is amended to remove the September 1, 2015, effective date for the TRS tiered reimbursement rates as these requirements are currently in effect.

Section 809.20(d) is amended to clarify in rule language the current requirement and practice that there must be a two percentage point difference between the TRS star levels.

Comment:

One commenter pointed out that the reference to §809.93(e) in the proposed §809.20(a) is incorrect.

Response:

The Commission appreciates the comment and agrees. This was an error in the proposed rules. The reference should be to §809.93(f), and this has been corrected in the final rules.

SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

The Commission adopts the following amendments to Subchapter C:

§809.41. A Child's General Eligibility for Child Care Services

CCDBG Act §658E(c)(2)(N)(i) requires that each child who receives CCDF assistance be considered to meet all eligibility requirements and receive assistance for not less than 12 months before eligibility redetermination. NPRM §98.20 clarifies that general eligibility requirements are applicable "at the time of eligibility determination or redetermination."

Consistent with CCDBG Act §658E(c)(2)(N)(i) and NPRM §98.20, §809.41 is amended to add language clarifying that a child's general eligibility requirements--i.e., child's age, citizenship status, and residency, and the family's income, work status, and attendance in a job training or educational activity--are applied at the time of eligibility determination or redetermination. Changes to the child's age or residency, the family's income, participation in work, job training, or education activities that occur during the 12-month eligibility period and affect the child's continued care and eligibility are covered in §809.42.

The CCDBG Act revised the definition of eligibility at §658P(4)(B) so that, in addition to being at or below 85 percent of SMI for a family of the same size, the "family assets do not exceed $1,000,000 (as certified by a member of such family)." This requirement is included in NPRM §98.20(a)(2)(ii).

Section 809.41(a)(3)(A) is amended to include this requirement and clarify that a family member must certify that the family assets do not exceed the $1,000,000 threshold. This certification will be based on the parent's self-attestation and will be included in the application for services. Boards are not required to verify this certification; however, if it is discovered that the family may exceed the $1 million asset threshold, the parent may be subject to fraud fact-finding procedures, as described in Subchapter F. Additional guidance will be provided in the Child Care Services Guide.

As mentioned previously, CCDBG Act §650E(3)(B)(i) and NPRM §98.46(a)(3) and §98.51 require states to give priority for services to children experiencing homelessness. The NPRM preamble clarifies that Lead Agencies have flexibility as to how they offer priority to this population.

Consistent with this requirement, §809.41(a)(2)(A) is amended to include language that families meeting the definition of experiencing homelessness in §809.2 are considered as having income that does not exceed 85 percent of SMI. Therefore, Boards are not required to conduct income eligibility determinations for families with a child experiencing homelessness.

Section 809.41 is amended to remove subsection (d) related to job search limitations. Continued child care for job search is described in §809.51.

CCDBG Act §658E(c)(2)(N)(iv) requires Lead Agencies to have a "Graduated Phaseout of Eligibility" that includes policies and procedures to continue child care assistance at the time of redetermination for children of parents who are working or attending a job training or educational program and whose income has risen above the Lead Agency's initial income eligibility threshold to qualify for assistance but remains at or below 85 percent of SMI.

NPRM §98.21(b) provides two options for states to use for the CCDBG Act's graduated phaseout requirement. The phaseout can be accomplished either by:

--establishing a second tier of eligibility at 85 percent of SMI if the parents, at the time of redetermination, are working or attending a job training or educational program, even if their income exceeds the initial income limit; or

--using the approach specified above, but only for a limited period of not less than an additional 12 months.

Section 809.41 is amended to add language requiring that Boards that establish initial family income eligibility at a level less than 85 percent of the SMI must ensure that the family remains eligible for care after passing the Board's initial income eligibility limit, up to 85 percent of SMI.

This language is consistent with NPRM §98.21(b)(1)(i), which provides the option to require that the family remain income-eligible for care after passing the initial income eligibility limit, including at the family's scheduled 12-month eligibility redetermination, as long as the family income does not exceed 85 percent of SMI.

In determining whether the family exceeds 85 percent of SMI, the Board shall use income calculation methodology and guidance that take into consideration fluctuations of income pursuant to §809.44(a).

The Commission notes that Boards are not required to establish initial family income eligibility at a level less than 85 percent of the SMI. The graduated phaseout requirements only apply to Boards that have established income eligibility thresholds pursuant to §809.41(a) that are less than 85 percent of the SMI. Boards are reminded that the establishment of income eligibility thresholds must be done in accordance with requirements for Board approving policies in an Open Meeting.

Comment:

Two commenters inquired if there is a federal requirement that WIOA-funded child care follow requirements in the CCDBG Act and the NPRM. The comments stated that Boards should be allowed to use WIOA funds for child care services without requiring the 12-month eligibility if the WIOA customer ends WIOA participation.

Response:

The Commission appreciates the comment and has amended §809.41 to add paragraph (f) to state that Subchapter C applies only to child care services using CCDF allocated by the Agency pursuant to its allocation rules at Chapter 800 General Administration rule §800.58, and local public transferred funds and local private donated funds described in §809.17.

Comment:

One commenter requested clarification regarding the provision in §809.41(c) related to time limits for child care if the parent is enrolled in an associate's degree program that will prepare the parent for a job in a high-growth, high-demand occupation as determined by the Board. The commenter suggested that this language be changed to read a "postsecondary degree program" and not specify the degree, as there is no Agency definition for what constitutes a high-growth, high-demand occupation. Additionally, the commenter asked what happens to eligibility if a parent is meeting eligibility requirements in one workforce area with his or her enrollment in an educational program but moves to another area and no longer meets eligibility due to a program/occupation not being on the new Board's list, since high-growth, high-demand occupation lists can vary significantly across the state. The commenter also requested clarification to confirm that students' career fields no longer will need to be attached to a targeted or demand occupation list.

Response:

The Commission declines to make the requested changes. To clarify, there is no requirement in Chapter 809 that a student's career field must be attached to a target or demand occupation in order to be eligible for child care services. However, a Board may choose to have a local policy that places this restriction as a condition of eligibility pursuant to §809.41(b) and §809.41(c), which require four years of eligibility if the parent is enrolled in such a degree program.

Section 809.41(b) allows Boards to establish policies for the provision of child care, including time limits, for the provision of child care services while the parent is attending an educational program. Section 809.41(c) requires that the time limits must ensure child care for four years if the parent is enrolled in a high-growth, high-demand occupation as determined by the Board. However, the provisions in §809.41(b) - (c) do not require parents to be in such a program leading to a high-growth, high-demand, or targeted occupation, absent a local policy placing this restriction.

Regarding the issue of a parent with an enrolled child moving to a workforce area that has a different educational requirement for eligibility, the educational eligibility requirement of the new Board can only be applied at the parent's scheduled 12-month redetermination.

§809.42. Eligibility Verification, Determination, and Redetermination

Section 809.42 is amended to include rule provisions related to eligibility verification, determination, and redetermination consistent with the CCDBG Act.

Section 809.42(a) is amended to emphasize that a Board shall ensure that all eligibility requirements for child care are verified prior to authorizing care. Due to the requirement in CCDBG Act §658E(c)(2)(N)(i) that each child who receives CCDF assistance will be considered to meet all eligibility requirements and will receive assistance for not less than 12 months before the eligibility is redetermined, it is critical that eligibility is properly and accurately verified prior to authorizing care.

Consistent with CCDBG Act §658E(c)(2)(N)(i) and NPRM §98.21, amended §809.42(b) requires that Boards ensure that eligibility for child care services shall be redetermined no sooner than 12 months following the initial determination or most recent redetermination.

Comment:

Several commenters strongly supported the establishment of a 12-month eligibility period. One commenter stated that this supports continuity of care for children while allowing for wage growth for families on a path toward economic stability.

Response:

The Commission appreciates the comment.

Comment:

One commenter expressed concern that the 12-month eligibility period in §809.42 will result in fewer children receiving child care services in Texas and across the nation unless there is additional funding for the child care portion of services. The result will be an increase in an already long waiting list for services. The commenter understands that this eligibility period is a requirement of the CCDBG Act; however, there may be unintended consequences that affect the ability to realistically move people back into the workforce.

Response:

The Agency agrees that the changes are required due to the changes in the CCDBG Act, and the Agency provided comments to the U.S. Department of Health and Human Services Administration for Children and Families (ACF) on the potential impact to the number of children in care. The Agency will very closely monitor the impact of the 12-month eligibility period on the number of children served and associated costs and any other unintended consequences.

Comment:

One commenter stated that leaving the recertification requirement open ended to occur not before 12 months, and not defining an absolute requirement for Board or contractor actions within a certain time period, Boards and contractors could be left open to an arbitrary assignment of improper payment based on failure to conduct due diligence.

Response:

The CCDBG Act and the NPRM clearly state that once a child is determined eligible, the child is assumed to be meeting the eligibility requirements for the 12-month eligibility period. Additionally, the NPRM clarifies that payments made during the eligibility period shall not be considered as improper payments due to a change in the family's circumstances. Agency rules further state that recoupments from the parents should only occur for instances in which eligibility was determined on information fraudulently reported or misreported.

With these guidelines in mind, it is important that the Board ensures that contractors continue to conduct due diligence for determining eligibility at the beginning of the eligibility period.

Additionally, the Agency will work with the Boards to develop data analysis tools and reports to assist Boards in identifying potential changes in a parent's ongoing eligibility during the 12-month period.

Comment:

Many commenters requested clarification regarding the language that eligibility for child care services shall be redetermined "no sooner than 12 months following the initial determination or most recent redetermination." Commenters stated that the language is unclear if eligibility redetermination needs to occur during the 12th month of care or the 13th month of care. One commenter acknowledged that this language matches the

language used in the NPRM, however, recommended clarifying that the redetermination process occurs prior to the end of the 12th month with an effective redetermination date after the 12th month. Two commenters recommended that the contractors be allowed to initiate the eligibility redetermination process prior to the end of the 12th month of eligibility, with any changes effective the day following the end of the 12th month of eligibility.

Response:

The rule language is identical to the language in the proposed CCDF regulations and CCDBG Act. The Commission agrees that the process for redetermining eligibility should begin prior to the end of the 12-month period and the actual redetermination decision should be made prior to the end of the 12-month eligibility period. However, if the parent is determined ineligible prior to the end of the eligibility period, then care shall continue through the end of the 12-month eligibility period. The time frame for beginning the redetermination process is determined by the Board. However, the time frame and deadlines for parents should ensure that sufficient time is allowed for parents to complete the eligibility process, and allow for the required 15-day notification of termination prior to the end of the current eligibility period (if the parent is determined ineligible).

The Commission also notes that CCDBG Act §658E(c)(2)(N)(ii) requires states to certify that parents ". . . are not required to unduly disrupt their employment in order to comply with the State's or designated local entity's requirements for redetermination."

Additional operational guidance regarding the redetermination process will be provided in the Child Care Services Guide.

§809.43. Priority for Child Care Services

Consistent with CCDBG Act §650E(3)(B)(i) and NPRM §98.46(a)(3) and §98.51, which require states to give priority for services to children experiencing homelessness, the Commission amends §809.43 to add children experiencing homelessness as a second priority group served, subject to the availability of funds. This priority group will follow the three priority groups in state statute--children in protective services, children of a qualified veteran or spouse, and children of foster youth.

Comment:

One commenter pointed out that the Sunset Review directs the Agency to study potential methods of providing incentives for parents participating in the child care subsidy program to choose providers with a TRS quality designation and include the results in its 2017 report to the legislature. The commenter recommended incentivizing parents to choose quality-rated programs by placing them on a priority wait list and when space is available at one of these programs, parents may choose a program with the commitment to keep their child in that program for at least six months. Program types would include TRS quality-rated programs and programs participating in the Early Head Start--Child Care Partnership grant.

Response:

The Commission thanks for the commenter for the suggestion. The Agency will take this under consideration as part of the study on providing incentives to parents to choose quality care.

Comment:

One Board recommended adding language to clarify that priority as defined in this section is applicable at initial enrollment. Otherwise, the language regarding service being subject to the availability of funds for the second priority group appears to contradict the 12-month eligibility period. The commenter inquired if "subject to the availability of funds" gives Boards the authority to terminate services for families in the second priority group during the 12-month eligibility period if funding is not available.

Response:

The Commission clarifies that the CCDBG Act requires that care shall continue through the 12-month eligibility period unless the family has a permanent end of employment, job training, or education participation of three months. Additionally, Continuity of Care rules at §809.54(b) state, "Nothing in this chapter shall be interpreted in a manner as to result in a child being removed from care." Boards should closely monitor funding levels prior to opening enrollment to new initial eligibility determinations. Additionally, the Agency will work with the Boards to develop data analysis tools and reports to assist Boards in projecting enrollments and managing funds in order to ensure that care for enrolled children is not discontinued due to the unavailability of child care funds.

Comment:

The Board recommends that §809.43(a)(2) be reworded to read, "The second priority group is served subject to the availability of funds and includes, in the following order of priority…" in order to ensure clarity of the intent that the priority groups outlined in the second priority group Item 2 be served in the order listed in the rule.

Response:

The Commission declines to make the change in rule language; however, the Child Care Services Guide will clarify the order of the priority group.

Comment:

One commenter requested that The Workforce Information system of Texas (TWIST) be changed to track local priorities.

Response:

The Agency will review the feasibility of making this change in TWIST.

§809.44. Calculating Family Income

CCDBG Act §658E(c)(2)(N)(i)(II) and NPRM §98.21(c) require that states take into consideration irregular fluctuations of earnings when calculating income for eligibility. The NPRM further clarifies this requirement by adding that the calculation of income policies ensures that temporary increases in income, "including temporary increases that result in monthly income exceeding 85 percent of SMI (calculated on a monthly basis), do not affect eligibility or family co-payments."

Section 809.44(a) is amended to reflect these new requirements. The rule language requires that Boards ensure family income is calculated in accordance with Commission guidelines. Consistent with the CCDBG Act, rule language also requires that Commission guidelines:

--take into account irregular fluctuations in earnings; and

--ensure that temporary increases in income, including temporary increases that result in monthly income exceeding 85 percent SMI, do not affect eligibility or parent share of cost.

A standard and uniform methodology applied consistently across all 28 workforce areas is important to ensure that the state is meeting the requirements of the CCDBG Act regarding fluctuations of income. Moreover, statewide consistency is important because child care is also required to continue if a parent moves to another workforce area.

The Commission will be developing guidelines to align income calculation methodology with federal program guidance regarding fluctuations in earnings. The guidance will include, but not be limited to, the following:

--Income documentation requirements at initial eligibility that may differ from requirements at redetermination;

--Documentation requirements for gaps in income;

--Calculation of bonuses received during the 12-month eligibility period;

--The methodology and documentation used to determine family income for changes reported during the 12-month eligibility period; and

--The methodology and documentation used to determine family income for parents who resume work, training, or education during the three-month period of nontemporary cessation of activities.

Section 809.44(b) is amended to provide an updated itemized list of income sources that are specifically excluded from determining family income. This list includes income sources that are specifically excluded by various federal laws or regulations in determining eligibility for public assistance programs, including CCDF, as well as income sources that are excluded by the WIOA adult program.

The specific exclusions are:

--Medicare, Medicaid, SNAP benefits, school meals, and housing assistance;

--Monthly monetary allowances provided to or for children of Vietnam veterans born with certain birth defects;

--Needs-based educational scholarships, grants, and loans, including financial assistance under Title IV of the Higher Education Act--Pell Grants, Federal Supplemental Educational Opportunity grants, Federal Work Study Program, PLUS, Stafford loans, and Perkins loans;

--Individual Development Account (IDA) withdrawals for the purchase of a home, medical expenses, or educational expenses;

--Onetime cash payments, including tax refunds, Earned Income Tax Credit (EITC) and Advanced EITC, onetime insurance payments, gifts, and lump sum inheritances;

--VISTA and AmeriCorps living allowances and stipends;

--Noncash or in-kind benefits such as employer-paid fringe benefits, food, or housing received in lieu of wages;

--Foster care payments and adoption assistance;

--Special military pay or allowances, including subsistence allowances, housing allowances, family separation allowances, or special allowances for duty subject to hostile fire or imminent danger;

--Income from a child in the household between 14 and 19 years of age who is attending school;

--Early withdrawals from qualified retirement accounts specified as hardship withdrawals as classified by the Internal Revenue Service (IRS);

--Unemployment compensation;

--Child support payments;

--Cash assistance payments, including Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Refugee Cash Assistance, general assistance, emergency assistance, and general relief;

--Onetime income received in lieu of TANF cash assistance;

--Income earned by a veteran while on active military duty and certain other veterans' benefits, such as compensation for service-connected death, vocational rehabilitation, and education assistance;

--Regular payments from Social Security, such as Old-Age, and Survivors Insurance Trust Fund;

--Lump sum payments received as assets in the sale of a house, in which the assets are to be reinvested in the purchase of a new home (consistent with IRS guidance);

--Payments received as the result of an automobile accident insurance settlement that are being applied to the repair or replacement of an automobile; and

--Any income sources specifically excluded by federal law or regulation.

The Commission understands that the new income calculation methodology and income exemptions may equate to lower parent share of cost assessments, thereby increasing the cost of care and reducing the number of children the Board may be able to serve. The Agency will continue to analyze Board costs, including parent share of cost, as part of the Agency's performance target methodology.

New §809.44(c) states that income that is not listed in §809.44(b) as excluded from income is included as income.

Comment:

One commenter supported a standard and uniform methodology that is applied consistently across all 28 Boards.

One commenter supported the amendment to require Boards to calculate family income by taking into account irregular fluctuations in earnings and to ensure that temporary increases in income do not affect eligibility or parent share of cost. The commenter commends the Commission on its recognition of and commitment to creating a standard and uniform methodology applied consistently across all 28 workforce areas in order to best meet the requirements of the CCDBG Act.

One commenter supported the Commission's amendment identifying income sources excluded from the calculation of family income, especially the exclusion of income earned by a veteran while on active military duty. The commenter has firsthand experience with the challenges military parents face and commends the state on recognizing the unique needs of military families. One commenter strongly supported the exclusion of child support payment, SSI, Social Security, and unemployment insurance (UI).

Response:

The Commission appreciates the comments.

Comment:

One commenter requested clarification regarding the exclusion of income earned by a veteran while on active military duty. The commenter requested confirmation that this means regular base pay of parents in the military is excluded and wondered whether special pay would continue to be excluded.

Response:

It is not the intent of the Commission that base pay of parents in the military be excluded as income. The rule language exempts income earned by a current veteran (a veteran at the time of eligibility determination or redetermination) during the time the individual was serving on active duty. It is also intended to exempt income earned by a current veteran who may have been called back on active duty. The base pay of parents on active military duty, however, is considered income. Further, special military pay would continue to be excluded, pursuant to §809.44(b)(9).

Comment:

One commenter requested clarification regarding the inclusion or exclusion of workers' compensation and alimony. The commenter suggested that workers' compensation, SSI, Social Security Disability Insurance (SSDI), UI, and alimony be included as income, as all of these sources are taxable.

Response:

The Commission clarifies that workers' compensation, SSDI, and alimony are not specifically excluded, and therefore, are included as income. However, the other payments (SSI and UI) are excluded from income, consistent with WIOA.

Comment:

One commenter requested clarification regarding payments from SSDI. The commenter noted that regular payments from Social Security (such as Old-Age and Survivors Insurance Trust Fund) are listed as excluded income; however, SSDI is not listed as being excluded. SSDI is very similar to regular payments from Social Security.

Response:

The Commission notes that recent guidance from the U.S. Department of Labor specifically requires that SSDI not be excluded from income for WIOA. Consistent with WIOA, SSDI is not listed as being excluded, and therefore, is included as income for child care eligibility and the parent share of cost assessment.

Comment:

Many commenters stated that a list of income that is excluded is difficult for frontline staff to operationalize, and, likewise, will be difficult for families to understand as well. The commenters recommended that the rules for calculating income include both an inclusion list as well as an exclusion list.

Response:

The income calculation guidelines in the Child Care Services Guide will clarify this issue. Similar to WIOA, it is expected that the parent will report all family income. When calculating income, the contractor should review the income reported and exclude from the calculation the sources that are excluded in rule. The Agency will work with Boards to provide ongoing technical assistance regarding this issue.

Comment:

Two commenters requested that the calculation methodology be made available for public comment prior to implementation.

Response:

The Agency is working with Boards to develop the income calculation methodology. The income calculation methodology will be available in the Child Care Services Guide, which is available to the public. The Agency welcomes input from the public on these operational guidelines.

Comment:

One commenter expressed appreciation for the efforts by the Agency to establish a standard and uniform methodology for calculating family income, but wishes to stress that it is imperative that this guidance be provided no later than September 1, 2016, in order for staff to employ the methodology when determining eligibility for customers whose eligibility redetermination is due at the beginning of October 2016.

In addition to establishing such a methodology, the Board would also recommend that the Agency provide forms and/or checklists that might be helpful in ensuring that the process is being followed accurately, and that all required documentation for calculating income has been ascertained.

Response:

The Agency will make the methodology, guidance, and technical assistance available at the earliest date possible upon the adoption of the final rules.

Comment:

In order to meet the requirement that the methodology take into consideration fluctuations of income, one commenter recommended that bonuses and incentive payments be excluded from income, as these sources fluctuate greatly. Additionally, as bonuses are considered to be a reward for high-performing employees, including these irregular amounts as countable income is believed to be contrary to the intent of the CCDBG Act of 2014.

Response:

The Commission appreciates the comments. The Commission's Chapter 809 rules include bonuses as part of the family income because the bonus may be a significant and stable source of family income. However, the calculation methodology will be designed to appropriately account for fluctuations in bonus amounts.

Comment:

One commenter recommended that the income calculation not follow the WIOA methodology requesting proof of income for the last six months, as this creates a barrier for most parents. Including income from a previous employment worked during the prior six months, but which has now ended, does not accurately reflect future wages. The commenter suggested three months of income as a more appropriate methodology. The commenter suggested that the methodology provide for multiple options for parents to report and document income, including the use of the year-to-date amounts and the most recent tax returns.

Response:

The Commission appreciates the comments and will take these suggestions into consideration in the income calculation methodology.

Comment:

Several commenters requested clarification on specific elements of the income calculation methodology, including:

--gaps in income;

--payments on commission-only;

--cash-only income;

--self-employment income;

--temporary increases that may be over 85 percent of SMI; and

--the methodology for calculating monthly income for individuals who are paid twice a month.

Response:

The Commission appreciates the comments. The income methodology will provide guidance on how these payments will be calculated.

§809.45. Choices Child Care

Section 809.45(b) is amended to clarify that for a parent receiving Choices child care who ceases participation in the Choices program during the 12-month eligibility period, Boards must ensure that Choices child care continues:

--for the three-month period pursuant to §809.51(b); and

--for the remainder of the eligibility period, if the parent resumes participation in Choices or begins participation in work or attendance in a job training or education program during the three-month period described in §809.51(c).

Comment:

One Board supported the Commission's efforts to stabilize child care for at-risk and vulnerable children whose parents are in the Choices, TANF Applicant, SNAP E&T, and child protective services child care programs. The commenter noted the September 2012 jointly funded brief by ACF's Office of Child Care and Office of Head Start Convened by the National Center on Child Care Professional Development Systems and Workforce Initiatives concluded that "Research has shown that babies who experience multiple disruptions in their early child care are more likely to show aggression and be less outgoing in the preschool years. Further, children's relationships with adult caregivers are vital for shaping the brain, early childhood development, and the foundations of school readiness."

Additionally, the commenter stated that the irrational and harmful practice of disrupting the care and education of young children whose parents are enrolled in these programs should end. The churning on and off of CCDF as parents lose assistance and later return fails to support CCDF's intentions to stabilize families, increase the quality of care for children, and support the child care industry.

Response:

The Commission appreciates the comment.

Comment:

Many Boards requested that the Commission consider the negative impact on Choices performance that can occur if Boards are required to provide child care for three months after a Choices participant ceases participation in the Choices program.

It is recommended that child care ceases when a Choices participant stops participating in the Choices program as required. Customers participating in Choices may receive assistance with child care expenses. Eligibility is determined monthly. Unlike other customers who receive assistance with child care expenses when eligibility is determined for a 12-month period, Choices eligibility is a month-to-month issue. The Boards would support a rule that limits assistance with child care expenses to:

(a) continued meeting participation requirements; and/or

(b) continued receipt of TANF benefits.

Just as eligibility is redetermined on a 12-month basis, Choices eligibility is determined monthly. If the customer does not meet the criteria for continued eligibility for Choices, then we should take action to stop the assistance with child care expenses.

Response:

The Commission emphasizes that ending child care prior to three-month continuation of care period is expressly disallowed under the CCDBG Act and the proposed CCDF regulations.

The Agency will closely monitor the impact of the changes to cost and performance.

Comment:

Many commenters requested clarification regarding which funding source should be used during the three-month continuation of when the Choices parent stops participating in Choices.

Response:

The Commission appreciates the comments and has modified §809.45(b)(1) and (2) to clarify that the continued care will be funded as Choices child care.

Once initially determined eligible for Choices child care, the parent is eligible to receive Choices child care throughout the entire 12-month eligibility period. However, if the parent stops participating in Choices, then Choices child care will continue during the required three-month continuation of care period. Choices child care will cease at the end of the 12-month eligibility period or after three months of nonparticipation in either Choices or other work, education, or training activities.

Comment:

Many commenters recommended that the current practice of determining eligibility for income-eligible child care services, complete with the assignment of a parent share of cost, be continued once a Choices participant is no longer participating in Choices.

Response:

As stated previously, once determined eligible for Choices child care, Choices child care will continue through the 12-month period as long as the parent is participating in Choices *or* work, training, or education activities. Also, as stated in the discussion on the parent share of cost in §809.19, parents participating in Choices are exempt from the parent share of cost at initial eligibility and the amount cannot increase during the 12-month eligibility period, as this would be contrary to the intent of the CCDBG Act and the NPRM.

Comment:

Several commenters asked whether the parent is placed in a job search for the three months and what documentation is required during the three months.

Response:

The Commission clarifies that there is no requirement to document that the parent is engaged in job search or other activities during the three-month continuation of care. The preamble to the NPRM also states, "In fact, we strongly discourage such policies, as they would be an additional burden on families and be inconsistent with the purposes of CCDF and this proposed rule."

Comment:

Several commenters inquired if there had been any consideration given to the fact that continued care under the CCDBG Act might have a negative impact on Choices and SNAP E&T workforce performance. The commenters inquired if TWC will readjust each Board's target number of units due to the higher cost associated with Choices child care.

Response:

The Agency will monitor any impact to Choices performance and Boards' child care performance targets.

Comment:

One commenter inquired whether an individual owes recoupment from suspected fraud and whether they still receive three months once Choices ends.

Response:

For prospective fraud determinations, we refer the commenter to the discussion on suspected fraud and fraud determinations in Subchapter F.

As stated previously, once determined eligible for Choices child care, Choices child care will continue through the 12-month period as long as the parent is participating in Choices or work, training, or education activities. This would include parents who owe recoupments.

Section 809.117(e) states that a parent subject to repayment for a fraud determination shall be prohibited from future eligibility until the repayment is made "provided that the prohibition does not result in a Choices or SNAP E&T participant becoming ineligible for child care." Future eligibility is considered to be at the parent's 12-month redetermination or the next time the parent applies for child care services. If a parent owes recoupments, but is eligible for Choices child care or SNAP E&T child care at initial eligibility due to participation in those activities, then care must be authorized. However, if the parent is no longer participating in either of these programs at redetermination or the next time the parent applies, then the parent is not eligible for care until the debt is repaid.

Comment:

One commenter asked when a Choices customer becomes Transitional before the 12-month eligibility period ends, does this mean he or she will not be assessed a parent share of cost until the next eligibility period or will the eligibility characteristic remain the same until the next recertification period?

Response:

The Choices eligibility period will last the full 12 months (unless the parent ceases to participate in Choices or other work, training, or education activity for three months). At the parent's 12-month redetermination, the parent will be redetermined based on Transitional child care eligibility requirements in §809.48 or At-Risk Child Care eligibility requirements in §809.50.

Comment:

Several commenters inquired if TWIST will be updated to allow a *Child Care Program Detail* with the Choices eligibility characteristic while a *Choices Program Detail* is closed? This will be required if a Choices child care customer ceases participation in the Choices program as their *Choices Program Detail* will be closed as a result; however, Boards will still be required to continue child care for the three-month period.

Response:

TWIST does not require an open *Choices Program Detail* in order to open a *Choices Child Care Program Detail*.

§809.46. Temporary Assistance for Needy Families Applicant Child Care

Section 809.46 is amended to remove provisions that:

--duplicate the 12-month eligibility period specified in §809.42; or

--would end care prior to the end of the 12-month eligibility period.

§809.47. Supplemental Nutrition Assistance Program Employment and Training Child Care

Section 809.47 is amended to remove language stating that SNAP Employment and Training (SNAP E&T) care continues as long as the case remains open.

Section 809.47(b) is added to clarify that for a parent receiving SNAP E&T child care who ceases participation in the E&T program during the 12-month eligibility period, Boards must ensure that:

--child care continues for the three-month period pursuant to §809.51; and

--the provisions of §809.51 shall apply if the parent resumes participation in the E&T program or begins participation in work or attendance in a job training or education program during the three-month period.

Comment:

Many commenters requested clarification regarding which funding source should be used during the three-month continuation of when the SNAP E&T parent stops participating in SNAP E&T.

Response:

The Commission appreciates the comments and, consistent with Choices child care in §809.45, has modified §809.47(b)(1) and (2) to clarify that the continued care will be considered as SNAP E&T child care.

Once initially determined eligible for SNAP E&T child care, the parent is eligible to receive SNAP E&T child care throughout the entire 12-month eligibility period. However, if the parent stops participating in E&T, then SNAP E&T child care will continue during the required three-month continuation of care period. SNAP E&T child care will cease at the end of the 12-month eligibility period or after three months of nonparticipation in either SNAP E&T or other work, education, or training activities.

Comment:

Many commenters recommended that the current practice of determining eligibility for income-eligible child care services, complete with the assignment of a parent share of cost, be continued once a SNAP E&T participant is no longer participating in SNAP E&T.

Response:

As stated previously, once determined eligible for SNAP E&T child care, SNAP E&T child care will continue through the 12-month period as long as the parent is participating in SNAP E&T *or* work, training, or education activities. Also, as stated in the discussion on the parent share of cost in §809.19, parents participating in SNAP E&T are exempt from the parent share of cost at initial eligibility and the amount cannot increase during the 12-month eligibility period as this would be contrary to the intent of the CCDBG Act and the NPRM.

§809.48. Transitional Child Care

Section 809.48 is amended to remove provisions that would end care prior to the end of the 12-month eligibility period.

Comment:

One commenter requested confirmation that the only change to this section was to remove those individuals who were not employed when TANF expired from eligibility for Transitional child care. The commenter stated that the current practice is to have the parent come in and determine eligibility for transitional care, and asked if this would still be the process.

Response:

The only changes to the section involved removing the provisions that would end care prior to the end of the 12-month eligibility period for Transitional child care. Once Choices child care ends at the end of the 12-month eligibility period, the family would be redetermined for eligibility as Transitional, if the conditions of §809.48 are met, or At-Risk, if the conditions of §809.50 are met.

§809.49. Child Care for Children Receiving or Needing Protective Services

Section 809.49 is amended to clarify that child care discontinued by DFPS prior to the end of the 12-month eligibility period shall be subject to the Continuity of Care provisions in §809.54(c) regarding continued care for closed DFPS Child Protective Services (CPS) cases.

Section 809.49 is also amended to clarify that the requirements of §809.91(f)(1) do not apply to foster parents whose care is authorized by DFPS. The language clarifies that requests made by DFPS for specific eligible providers are enforced for children in protective services, including children of foster parents when the foster parent is the owner, director, assistant director, or other individual with an ownership interest in the provider.

A technical change to §809.49(a)(2) is made to clarify that DFPS may authorize care for a child under the age of 19.

Comment:

The Commission received many comments regarding the continuation of care through the end of the 12-month eligibility period for closed DFPS CPS cases as required in §809.54(c) and §809.49(a)(3). Commenters submitted that this provision would strain Board funding and would lead to many low-income customers not receiving care. One commenter suggested that the Commission make an exception to the continuity of care provision for DFPS customers. One commenter asked if there would be a minimum amount of time that the child will be required to be funded by DFPS before DFPS discontinues funding and the child is served using Board funds.

Response:

As mentioned regarding continued care for Choices and SNAP E&T, discontinuing care prior to the end of the 12-month period is not allowed under the CCDBG Act or the proposed CCDF regulations. The preamble to the CCDF regulations states:

Based on feedback from the States and various stakeholders, ACF has already considered possible exceptions to the minimum 12-month eligibility period for certain populations, such as children in families receiving TANF and children in protective services, but has decided that such special considerations would be in conflict with the CCDBG Act, which clearly provides 12-month eligibility for all children.

The Agency will closely monitor the impact of the changes to cost and performance.

Comment:

Several commenters requested clarification as to whether the eligibility requirements outlined in §809.41 apply to families receiving protective services child care once DFPS funding has ended. The commenters are aware that many parents receiving DFPS CPS funding for child care are not eligible under §809.41 because they are not meeting work, training, or educational requirements or they are earning over 85 percent of SMI. The commenters stated that families not meeting the eligibility requirements in §809.41 would need to be terminated once DFPS eligibility expires.

One commenter suggested that once CPS funding ends, children are allowed to be placed in CCDF funding for three months. At the end of the three months, the Board contractor would determine if parents are meeting eligibility requirements. If the family is no longer eligible, the care should end.

Response:

As stated in §809.41(a), the eligibility requirements in that section do not apply to children authorized for care by DFPS under §809.49. The CCDBG Act and the NPRM require that during the period of time between redetermination, if the child met all of the requirements for eligibility on the date of the most recent eligibility determination or redetermination, the child shall be considered to be eligible and will receive services for the 12-month eligibility period.

DFPS determines that the child meets eligibility requirements for CPS child care pursuant to §98.20(a)(3)(ii) of the CCDF regulations, which allows for children in protective services to be eligible for care if the parent or caretaker is not working or if family income is over 85 percent of SMI.

Once DFPS makes that determination, pursuant to the CCDBG Act, the child is considered eligible for the 12 months. Once DFPS closes the child protective case, then DFPS-funded care will end and Agency-funded care will begin through the remainder of the eligibility period.

Comment:

Many commenters inquired if former DFPS children will be made a required priority group or will be subject to the availability of funds. Many commenters recommended that former CPS be included as a second priority group, subject to the availability of funds.

Response:

Once DFPS authorizes care for a child in protective services, the Boards must provide child care services to that child. As mentioned previously, care must continue through the end of the

12-month eligibility period. At the end of the 12-month eligibility period, the child's eligibility will be redetermined for continued care under any eligibility type in Subchapter C.

The Agency acknowledges that CPS cases must be served and not be subject to the availability of funds. The Agency will closely monitor the impact of the changes to cost and performance.

Comment:

Several commenters requested clarification on when the 12-month eligibility begins for DFPS cases. The commenter inquired if the 12-month period begins when DFPS case opened the authorization or when DFPS case is closed.

Response:

The 12-month eligibility period begins when DFPS first authorizes the care.

Comment:

Several commenters requested information on the process for continuing care for former CPS cases. One commenter asked if the DFPS cases will be closed and referred to the Board contractor as "Former DFPS," or will the child be considered as at-risk. Another commenter requested clarification on what information will be requested or required from the parent or guardian.

Response:

The DFPS program detail will be closed and a new "Former DFPS" program detail will be opened with an end date that is 12 months from the start of initial DFPS authorization. The Agency will work with DFPS to ensure that information necessary for the Board to continue care is provided to the Board. Additional information on the process for continuing the care will be addressed in the Child Care Services Guide.

§809.50. At-Risk Child Care

Section 809.50 is amended to clarify that eligibility requirements for At-Risk child care are applied at initial determination and at the 12-month eligibility redetermination, pursuant to §809.41 and §809.42.

Comment:

One commenter stated that with the rule that services must continue when there is a change in residency within the state, the allowance for the Board to set a higher number of hours per week may be difficult for parents at the point of redetermination. If the parent moves from a Board area that uses the 25 hours per week rule and is eligible and then moves into another Board area that requires a higher number of hours for each parent, the child would remain in care for the remainder of the 12 months, but at the point of redetermination, the parent would then have to meet the current Board's higher rule. The commenter recommended to remove the allowance of the Board to set a higher number of hours per week in order to ensure consistent eligibility across the state.

Response:

The Commission declines to make this change and will continue to allow Boards the local flexibility to have higher minimum work hours than the minimum Agency requirement. This is a local decision based on local needs and local factors as determined by the Board.

Comment:

One commenter pointed out that the proposed rules at §809.50(a)(1) made a reference to §809.41(a)(2)(A) instead of (a)(3)(A) in regards to income limits established by the Board.

Response:

The Commission appreciates the comment and has made the correction on the final rules.

§809.51. Child Care during Interruptions in Work, Education, or Job Training

Section 809.51 is amended to include CCDBG Act and NPRM requirements regarding the provision of child care during interruptions in work, education, or job training. The section contains the rules related to both temporary interruptions and permanent cessation of activities during the 12-month eligibility period.

Section 809.51(a) is amended to include the CCDBG Act requirement that if a child met all of the applicable eligibility requirements for any child care service in Subchapter C on the date of the most recent eligibility determination or redetermination, the child shall be considered to be eligible and will receive services during the 12-month eligibility period, regardless of any:

--change in family income, if that family income does not exceed 85 percent of SMI for a family of the same size; or

--temporary change in the ongoing status of the child's parent as working or attending a job training or education program.

Consistent with language in the NPRM, a temporary change shall include, at a minimum, any:

--time-limited absence from work for an employed parent for periods of family leave (including parental leave) or sick leave;

--interruption in work for a seasonal worker who is not working between regular industry work seasons;

--student holiday or breaks within a semester, between the fall and spring semesters, or between the spring and fall semesters, for a parent participating in training or education;

--reduction in work, training, or education hours, as long as the parent is still working or attending a training or education program;

--other cessation of work or attendance in a training or education program that does not exceed three months;

--change in age, including turning 13 years old or a child with disabilities turning 19 years old during the eligibility period; and

--change in residency within the state.

Section 809.51(b) is amended to require that during the period of time between eligibility redeterminations, a Board shall discontinue child care services due to a parent's loss of work or cessation of attendance at a job training or educational program that does not constitute a temporary change in accordance with paragraph (b)(2) of this subsection. However, Boards must ensure that care continues at the same level for a period of not less than three months after such loss of work or cessation of attendance at a job training or educational program.

Section 809.42(c) is amended to state that if a parent resumes work or attendance at a job training or education program at any level and at any time during the three months, Boards shall ensure that:

--care will continue to the end of the 12-month eligibility period at the same or greater level, depending upon any increase in the activity hours of the parent; and

--the parent share of cost will not be increased during the remainder of the 12-month eligibility period, including for parents who are exempt from the parent share of cost pursuant to §809.19.

This is consistent with NPRM §98.21(a)(3), which prohibits states from increasing the parent share of cost during the 12-month eligibility period, regardless of increases in the family income.

The rule language also clarifies that the Board child care contractor shall verify only:

--that the family income does not exceed 85 percent SMI; and

--the resumption of work or attendance at a job training or education program.

Section 809.51(d) is amended to state that the Board may suspend child care services during interruptions in the parent's work, job training, or education only with the concurrence of the parent.

School Holidays and Breaks

The Commission clarifies that student holidays such as spring break and breaks between the fall and spring semesters, or between the spring and fall semesters (including the summer break), are considered temporary changes, and care shall continue during those breaks. However, breaks of the full fall or the full spring semesters are considered nontemporary, and care ends if the parent does not resume attendance at an education or job training program, or does not participate in work within three months from the end of the previous enrollment.

Reductions in Work, Training, or Education for Dual-Parent Families

The Commission clarifies that in a dual-parent family, if both parents have a nontemporary loss of job (or end of training/education activities), then the family would be subject to the three-month job search period prior to termination. However, if one parent experiences a nontemporary change, then this would be considered a reduction in the dual-parent 50-hour participation requirements. Under the CCDBG Act, a reduction in work is not considered a permanent loss of job and is not subject to discontinuation of the child's care. Care would continue through the 12-month period without requiring care to end if one parent does not resume activities within three months. The child is still residing with at least one parent who is working and is still eligible under the CCDBG Act.

Continued Care for Children over the Age of 13 or the Age of 19 for a Child with Disabilities

The Commission notes that the DFPS Child Care Licensing allows children under the age of 14 (and under the age of 19 for children with disabilities) to receive care at a regulated facility. However, the Commission is aware that some child care facilities do not serve children over the age of 13 or 19 (for a child with disabilities). In such a case, the Board must ensure that eligibility does not end and work with parents and provider to continue care at a different provider selected by the parent until the end of the child's eligibility period, unless the parent voluntarily withdraws from child care services.

Continued Care for Children and Families Relocating to Another Workforce Area

Under the CCDBG Act, a change in the child's residence is not grounds for ending care in the state, regardless of the enrollment status of the workforce area to which the parent moved. The Commission understands that a Board at full enrollment would be required to enroll and fund children even if the Board enrollment of new children is closed at the time. The movement of children both into and out of workforce areas is anticipated to be balanced throughout the year. However, the Agency will track this movement and the fiscal impact on Boards to determine if funding amounts should be adjusted accordingly.

Additional policies, procedures, and documenting requirements regarding continuation of care for children and families who relocate to another workforce area will be provided through updates to the Child Care Services Guide.

The Commission clarifies that the Board that determined eligibility at the beginning of the 12-month period is responsible for any subsequent finding of improper eligibility determinations. However, the Board in the workforce area in which the family relocates is responsible for verifying that the move did not result in a nontemporary loss of work, training, or education, and the family is not over 85 percent of the SMI.

The Commission clarifies that if the move to a different workforce area does not result in a change of provider (i.e., the child remains at the originating workforce area provider), then care would continue at that provider under the originating Board's agreement, rates, and funding through the remainder of the authorization for care and the end of the 12-month eligibility period. However, if the move to a different workforce area results in or is accompanied by a change in provider, then the receiving Board will establish and fund the authorization.

The Commission also clarifies that if a parent is participating in the three-month period of continued care and relocates to a different workforce area without resuming activities, then the parent would not receive a new three-month period, but is entitled to continue the three-month period that began in the previous workforce area.

Other Cessation of Work, Training, or Education Activities

The Commission recognizes that there are situations, such as parent incarcerations or other circumstances, that may not be clearly defined in the rules. The Commission will work with Boards to provide guidance on these situations. As a general rule, if the separation from activities is of a length that would allow the parent to continue participation within three months, then care would continue through the remainder of the 12-month eligibility period. If, however, the separation is expected to last over three months, then care would be discontinued three months after the cessation of work, training, or education.

Number of Three-Month Periods in a 12-Month Eligibility Period

The CCDBG Act requires that care continue for at least 12 months following the initial eligibility determination. Neither the CCDBG Act nor the NPRM allows states to put limits on the number of three-month periods of continued care that a parent may have during the 12-month eligibility period. Parents will be allowed a three-month period of continued care for each nontemporary cessation of activities within the 12-month eligibility period.

Parent Share of Cost during the Three-Month Period of Continued Care

As required in §809.19(a)(1)(c), the parent share of cost is reassessed if a parent reports a change in income that would result in a reduced parent share of cost. Accordingly, the parent share of cost should be reassessed during the three-month period due to the resulting reduction of family income. As mentioned in the discussion on calculating family income in §809.44, the Commission will provide guidance on the methodology used to calculate income during this period in order to take into consideration fluctuation in income. During this period, Boards may also reduce the parent share of cost based on the Board policies for reductions due to extenuating circumstances pursuant to §809.19(d).

Increases in the Level of Care following the Three-Month Period of Continued Care

Section 809.51(c) requires care to continue to the end of the 12-month eligibility period at the same or greater level, depending on any increase in the activity hours of the parent. The Commission expects that the parent should provide documentation to verify that such an increase is warranted.

Suspensions of Child Care during the 12-month Eligibility Period

The preamble to the NPRM notes that, consistent with §658E(c)(2)(N)(i) of the CCDBG Act, "during the minimum 12-month eligibility period Lead Agencies also may not end or suspend child care authorization or provider payments due to a temporary change in a parent's work, training, or education status." However, the preamble also notes that "despite the language that the child 'will receive such assistance,' the receipt of such services remains at the option of the family." The law does not require the family to continue receiving services, nor would it force the family to remain with a provider if the family no longer chooses to receive such services.

Therefore, the amended Commission rules require that any suspensions of care during the 12-month eligibility period shall only be upon concurrence from the parent. This provision is included in §809.51 regarding optional suspensions of care during interruptions in work, job training, or education. As will be discussed in §809.78 regarding attendance standards, the requirement that care can only be suspended at the concurrence of the parent is also included for suspensions of care under §809.78.

Implementation of the 12-Month Eligibility Period

The Commission clarifies that eligibility determinations under the new rules will go into effect at the family's first scheduled redetermination (under the Board's previous determination period) following October 1, 2016.

Comment:

Several commenters supported the requirements regarding continuation of care during interruptions of work, training, or education activities. One commenter strongly supported the proposed amendments stating that it will make it easier for parents to maintain employment or complete education programs, and supports both family financial stability and the relationship between children and their caregivers.

Another commenter supported the continuation of child care for the 12-month eligibility period if one parent in a dual-parent household experiences a permanent loss of job or end of training or education activities. The commenter supports efforts to decrease the churning on and off of subsidized care as parents lose assistance then later return. The commenter is aware of the harm this can cause children and understands that it runs counter to the CCDF's purpose to stabilize the care and education of low-income children.

Another commenter supported the changes to ensure the continuity of care and putting the welfare of the child first.

Response:

The Commission appreciates the comments.

Comment:

One commenter noted that some summer breaks slightly exceed the three-month period cited in the rule language as a temporary break. The commenter requested clarification as to whether summer breaks are included as a temporary break or a nontemporary break.

Response:

The Commission appreciates the comment and agrees that summer breaks should be considered as temporary breaks in education. The rule has been modified to state that breaks between the fall and spring semesters, or between the spring and fall semesters, are considered temporary changes. This would include summer breaks as meeting the standard in §809.51(a)(2)(C) as a temporary break in education.

Comment:

One commenter noted that parent-requested suspensions are not mentioned in the new rules. The commenter inquired if parents will continue to be allowed to suspend care during temporary breaks in work or training periods. The commenter noted that some parents prefer to have their children at home with them on breaks and not pay the parent share of cost while on the breaks, including suspensions for court-ordered visitations.

Response:

The Commission appreciates the comment and, as discussed previously, has added a provision in §809.51(d) that parents may suspend care during interruptions in work, training, or education. The rule requires that the suspension must be at the concurrence of the parent.

Comment:

One commenter inquired if a child with disabilities turns 19 during the 12-month eligibility period, does the child remain in care until the end of the eligibility period or would the child's care end from care the day before their 19th birthday.

Response:

The Commission appreciates the comment and has modified the rule to include that eligibility for children with disabilities continues through the end of the 12-month eligibility period if the child turns 19 during the eligibility period.

Comment:

Many commenters disagreed with the provision that allows for one parent in a dual-parent family to experience a permanent loss of a job and for the change to be considered a reduction in work. Commenters submitted that allowing such families to continue to receive care effectively held single-parent families to a higher participation standard than two-parent families.

Response:

The CCDBG Act and the CCDF regulations do not specifically address this issue of single or dual-parent families.

In the Act and the regulations, a child's eligibility requirement is to reside with "a parent or parents who are working or attending a job training or educational program" (CCDBG Act 658P(4)(C)(i); NPRM §98.20(a)(3)(i)). The language is unchanged in the reauthorization and proposed regulations.

Both the Act (658E(c)(2)(N)) and the NPRM (§98.21) require that the child remain eligible between eligibility periods regardless of a temporary change in "the parent's" (singular) status. Both use the singular "parent" regarding the *state option* to end care if a "parent" has a nontemporary cessation of activities. Because this is a state option, there is no requirement in the Act or the regulations that the state must end care if one parent in a dual-parent family has a permanent cessation of activities.

In fact, the preamble states that the default is to continue care for 12 months in order to ensure that the goal of continuity of care is maintained and child care is available to assist the parent if he or she regains employment.

Therefore, in order to comply with the intent of the CCDBG Act that child care continue for 12 months, both parents must have a permanent cessation of activities in order to end care after the three-month continuation of care period. This would ensure that the goal of continuity of care for the child is maintained and ensure that child care is continued while one parent is working while the other parent reenters the workforce.

Comment:

One commenter asked if §809.51(a)(2)(D) means that the parent can be working less than 25 hours and if this would be considered temporary.

Response:

The minimum activity requirement of 25 hours per week (50 hours for a dual-parent family) is a state requirement. NPRM §98.21(a)(1)(ii)(D) includes reduction in hours, as long as the parent is working or in training or education, as a temporary status change, and the child will remain eligible for care through the 12-month eligibility period.

Comment:

One commenter requested clarification on how Boards "must ensure" eligibility continues at a different provider when a child turns 13. Boards do not have any control over providers or their policies regarding the age of the youth they serve.

Response:

The Commission understands that providers may discontinue a child's care when the child turns 13, pursuant to the provider policy. However, Boards must ensure that the eligibility is not ended. The Board must ensure that the child remains eligible during the eligibility period. Boards are strongly encouraged to assist parents in locating providers that care for 13-year-old children and should make a diligent effort to find and encourage local providers to care for children through the age of 13.

As provided in §809.51(d), parents may decide to have care suspended pending the choice of an acceptable provider.

Comment:

One commenter inquired if the three-month continuation of care is three calendar months or 90 calendar days. The commenter preferred to establish three calendar months as the benchmark. The commenter also requested this clarification regarding the three-month initial eligibility for children experiencing homelessness.

Response:

The Commission clarifies that the requirement is for three months, not 90 days. Therefore, the standard will be to use three calendar months.

Comment:

Many commenters requested clarification and guidance on specific scenarios that may occur during the 12-month eligibility period related to continuing care or ending care after the three-month period. The commenters also requested clarification on the process, documentation requirements, and handling provider payments when a child in care moves from one workforce area to another. One commenter requested that guidance be provided in the Child Care Services Guide.

Response:

The Commission appreciates the comments and will review each scenario and provide guidance in the Child Care Services Guide.

Comment:

One commenter inquired if care continues for the year of eligibility if a parent moves out of state after the child is determined eligible for care.

Response:

Agency child care funds cannot be used for customers who do not reside in Texas.

§809.52. Child Care for Children Experiencing Homelessness

New §809.52 is added to include initial eligibility for children experiencing homelessness. CCDBG Act §658E(c)(3) requires that state procedures permit enrollment (after an initial eligibility determination) of children experiencing homelessness while required documentation is obtained.

Consistent with this requirement, §809.52(a) requires that for a child experiencing homelessness, a Board shall ensure that the child is initially enrolled for a period not to exceed three months.

Section 809.52(b)(1) states that if, during the three-month enrollment period, the parent of a child experiencing homelessness is unable to provide documentation verifying that the child meets the age and citizenship status requirements under §809.41(a)(1) - (2), then care shall be discontinued following the three-month enrollment period. Consistent with NPRM §98.51, payments of child care services for this three-month period are not considered improper payments.

Section 809.52(b)(2) states that if, during the three-month enrollment period, a parent provides documentation verifying eligibility under §809.41(a) (regarding the child's age and citizenship status, and the parent's participation in work, job training, or education activities) then care shall continue through the end of the 12-month initial eligibility period (inclusive of the three-month initial enrollment period).

For parents of children experiencing homelessness, parent self-attestation of the eligibility requirements under §809.41(a)(1) - (2) will be allowed for the first three months for all eligibility requirements, as long as the family meets the definition of homelessness. This can be verified through another entity such as a school district or housing authority, or by the Board contractor.

The Agency will work with Boards to provide guidance on determining initial and continuing eligibility for homeless families.

The Commission clarifies that parents of children experiencing homelessness must have appeal rights pursuant to §809.74.

Comment:

One commenter requested clarification as to whether or not initial eligibility includes verifying employment, training, and education activities for family members, and, if so, if verification documentation must be presented at that time or if self-attestation is adequate. The commenter understands that documentation related to age and citizenship does not have to be presented at initial eligibility but must be presented within three months for care to continue. The Board appreciates the Agency's stated commitment to providing guidance on determining initial and continuing eligibility for homeless families, and requests that this guidance be included in the Child Care Services Guide.

Response:

The Commission clarifies that initial eligibility for homeless children does not include the parent's participation in work, training, or education. However, verification of these requirements must be conducted in order for care to continue after the initial eligibility period.

Comment:

One commenter requested clarification regarding acceptable documentation to verify homelessness. For example, is self-attestation acceptable only at initial eligibility determination and is the initial certification period only for three months, with a zero parent share of cost assessed? Then, at the end of the three-month certification, must all required eligibility documents be provided in order to continue care through the remainder of the 12-month period? At that point, is the parent share of cost assessed based on the sliding fee scale?

Response:

The Commission clarifies that self-attestation is acceptable to verify homelessness at initial eligibility. All required documentation to verify eligibility under §809.41 is required at three months. Pursuant to §809.19(a)(2), parents of homeless children are exempt from the parent share of cost for the entire 12-month eligibility period.

§809.53. Child Care for Children Served by Special Projects

Section 809.53 is amended to clarify that the provisions related to child care for children serviced by special projects are only for special projects funded through non-CCDF sources.

Comment:

Two commenters inquired if there is a federal requirement that WIOA-funded Child Care follow requirements in the CCDBG Act and the NPRM. The comments stated that Boards should be allowed to use WIOA funds for child care services without requiring the 12-month eligibility if the WIOA customer ends WIOA participation.

Response:

The Commission appreciates the comment and has amended §809.41 to add paragraph (f) to state that Subchapter C applies only to child care services using funds allocated by TWC pursuant to its allocation rules at §800.58, and local public transferred funds and local private donated funds described in §809.17.

§809.54. Continuity of Care

Section 809.54 is amended to clarify that for enrolled children, including children whose eligibility for Transitional child care has expired, care continues through the end of the applicable eligibility periods described in §809.42.

Rule language also clarifies that enrolled children of military parents in military deployment remain eligible for continued care, including parents in military deployment at the end of the 12-month eligibility redetermination period.

Section 809.54 also removes the temporary placement of a child if space is available due to another child's absence due to custody arrangements, as temporary placements are contrary to the CCDBG Act's 12-month eligibility requirements.

Comment:

Regarding §809.54(c), many commenters submitted identical or similar comments in §809.49 regarding continued care for closed DFPS Child Protective Services.

Response:

Responses to comments submitted in §809.54(c) are addressed in the discussion in §809.49.

Comment:

Many commenters requested clarification regarding the allowability of two providers being reimbursed for the same period when parents have joint custody and the child is cared for by two different providers every other week.

Response:

Section 809.93(b) requires that providers be reimbursed based on the child's monthly enrollment authorization, excluding periods of suspensions. Section 809.78(c) requires that absences due to court-ordered visitation are not included in the child's total absences for meeting attendance standards.

The monthly child care enrollments for joint-custody arrangements such as the one described in the comment should be consistent with the court order. If the court-ordered joint custody arrangement calls for a change in child care arrangements every other week, then the monthly enrollment must reflect that and the provider be reimbursed according to the monthly authorization.

Comment:

One commenter expressed appreciation for removing the temporary placement of a child in a slot made open during another child's court-ordered custody arrangements.

Response:

The Commission appreciates the comment.

Comment:

One commenter requested clarification regarding filling a slot temporarily for a child on court-ordered visitation since temporarily filling a slot is no longer allowed due to the 12-month eligibility period once a child is determined eligible for care. However, the commenter stated that the Board must ensure that a child can return to the same provider pursuant to §809.54(e). The commenter asked how the Board would pay for that child's enrollment during the time the child is away on court-ordered visitation. The commenter is concerned that the provider will not want to hold the spot unless the Board reimburses the provider. The commenter asked if the provider charges the client to hold the spot.

Another commenter requested guidance if child care during custody arrangements would be considered a suspension of care.

Response:

The Commission clarifies that §809.54(e) does not require that the child return to the same provider following a court-ordered visitation. The rule requires that the child return to care "at the same provider or a different provider if agreed to by the parent in advance of the leave." The enrollment during the court-ordered arrangement should continue during the court-ordered visitation. However, the parent will still be responsible for paying the parent share of cost for care during the court-ordered visitation. If the parent decides to suspend the authorization and not pay the parent share of cost, then the provider is not allowed to hold the spot open, as holding spots open without an enrollment authorization is not allowed under §809.93(g). The Commission clarifies that the suspension of care must be at the option of the parent.

Comment:

One commenter pointed out that the reference in §809.54(b) to §809.75(b) regarding care during appeals was removed.

Response:

The Commission appreciates the comment and has made the correction to the reference in the final rule at §809.48.

§809.55. Mandatory Waiting Period for Reapplication

Section 809.55, regarding a mandatory waiting period for reapplication if care is terminated for certain reasons, is repealed because the listed termination reasons for ending care are no longer applicable.

The Commission did not receive comments on the repeal of this section.

SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

The Commission adopts the following amendments to Subchapter D:

§809.71. Parent Rights

Section 809.71 is amended to clarify that the 20-day eligibility notification following receipt of eligibility documentation from the parent is applicable only at the initial eligibility determination.

Section 809.71(9) is amended to remove the exceptions to the 15-day notification of termination for instances in which care is to end immediately due to a parent no longer participating in Choices or SNAP E&T or due to a child being absent five consecutive days, as these are no longer eligible reasons to terminate care during the 12-month eligibility period.

Regarding the 15-day termination notice, the Commission clarifies that for parents with a nontemporary cessation of activities, at a minimum, notification must be provided at least 15 calendar days prior to the end of the three-month period of continued care. However, Boards should also clearly notify or provide clear instructions to parents at the beginning of the three-month period that care will end if the parent does not resume participation at any level within three months.

Section 809.71 is amended to remove the 30-day notification due to terminations to make room for a priority group member, as this is no longer an allowable reason to terminate care during the 12-month period.

Section 809.71 is also amended to remove the requirement that parents be informed of the Board's attendance policies. Notification of the attendance standards are located in amended §809.78.

Comment:

Two commenters disagreed that the 20-day notification of eligibility be applied at both the initial eligibility determination and the eligibility redetermination, as required in the proposed rules. The commenters stated that the notification within 20 days upon receipt of all necessary documentation is pertinent for initial determination. However, redeterminations must be completed with sufficient time in order to meet the 15-day termination notification prior to end of the 12-month period. Therefore, the same allowance to receive all necessary documentation and then determine and notify within 20 days is not applicable.

Since the child is already receiving care, and if the intent is not to have an interruption in services, the commenters recommend that the required documentation be received at least 30 days in advance of the end of the eligibility period, which will allow for processing time, and in the event the parent is not eligible for services to continue, the termination of services could be realized and care would not continue past the 12-month end date.

Response:

The Commission agrees with the commenters and has modified the rules to establish the 20-day notification of eligibility or denial only for initial eligibility determinations. The Commission also agrees with the commenters and clarifies that if the family is determined to not be eligible for care at the eligibility redetermination, then the family must be notified of termination at least 15-days before the end of the current 12-month eligibility period.

The Commission believes that the timeline for parent submission of documentation is at a Board's discretion. However, a Board must ensure that the deadline for submitting redetermination documentation provides sufficient time for a Board child care contractor to accurately redetermine eligibility and to ensure that the Board child care contractor provide the 15-day notification of termination prior to the end of the 12-month eligibility period, if it is determined that the family is not eligible for care.

Comment:

Several commenters recommended that the 20-day notification of the eligibility determination be extended to allow for quality assurance. Since significant resources are being committed due to the 12-month eligibility period, the commenters stated that it is critical that accuracy is maintained and recommended additional time be allowed for review of case processing.

Response:

The Commission declines to extend the 20-day requirement for initial eligibility determinations. The Commission agrees that accuracy and quality assurance is vital, especially with the 12-month eligibility period; however, this quality assurance should be conducted within 20 days in order to ensure that parents who need child care do not have a delay in services.

Comment:

Many commenters requested clarification as to whether the 15-day notification of termination is provided during the period of care or at the end of the care. Several commenters recommended that the clarification provided in the preamble that the notification of termination notice be provided at least 15 days prior to the end of the three-month period of continued care be adopted in all instances in which this notification is required

to be sent. To send the notification on the termination date requires the Board to pay for an additional 15 days of care and adds to the increased cost of care.

Response:

The Commission clarifies that the 15-day notification is required at least 15 days prior to ending care at the end of the eligibility period, if the parent is determined not to be eligible, or at the end of the three-month continuation of care period, if the parent has not resumed activities, and emphasizes that the 12-month eligibility period cannot be extended to allow for the 15-day notice of termination.

Comment:

Two commenters recommended that proposed language stating the customer has the right to receive written notification at least 15 days before termination of child care services be changed to say the customer has the right to be sent written notification at least 15 days before termination of child care services. The commenter questions how the Board or contractor would determine the customer received the written notification.

Response:

The Commission declines to make changes to this rule. This is a long-standing requirement with which Boards and Board contractors should be familiar. It is correct that there is no guarantee that the parent would actually receive the notification, particularly if the parent moves and did not notify the Board. However, the intent of the language is that the Board's contractor must send the notification to ensure, under normal circumstances, that the parent would receive the notification at least 15 days of termination.

Comment:

One commenter inquired if, during the redetermination process, the family income exceeds 85 percent of SMI, does the customer still have 15 days from the day the parent is notified of the termination of child care services.

Response:

The Commission clarifies that the parent must receive a notification at least 15 days prior to terminating care at the end of the 12-month eligibility period, including for cases determined ineligible due to family income exceeding 85 percent of SMI.

§809.72. Parent Eligibility Documentation Requirements

Section 809.72(a) is amended to clarify that child care cannot be determined or redetermined and care cannot be authorized until parents provide to the Board's child care contractor all the information necessary to determine eligibility.

Section 809.72(b) is amended to clarify that a parent's failure to submit required documentation shall result in initial denial of child care service or the termination of services at the 12-month redetermination period.

As mentioned in §809.42(a), due to the requirement in CCDBG Act §658E(c)(2)(N)(i) that each child who receives CCDF-funded child care will be considered to meet all eligibility requirements and will receive assistance for not less than 12 months before the eligibility is redetermined, it is critical that all eligibility documentation submitted is properly and accurately verified prior to authorizing care. As described in §809.42(c), an exception to this requirement exists for a child experiencing homelessness.

§809.73. Parent Reporting Requirements

CCDBG Act §658E(c)(2)(N)(ii) and NPRM §98.21(e)(2) state that any requirement for parents to provide notification of changes in circumstances shall not constitute an undue burden on families. Any such requirements shall:

--limit notification requirements to changes that impact a family's eligibility (e.g., only if income exceeds 85 percent of SMI, or there is a nontemporary change in the status of the child's parent as working or attending a job training or educational program) or changes that impact the Lead Agency's ability to contact the family or pay providers;

--not require an office visit to fulfill notification requirements; and

--offer a range of notification options (e.g., phone, e-mail, online forms, extended submission hours) to accommodate the needs of working parents.

Further NPRM language states that Lead Agencies must allow families the option to voluntarily report changes on an ongoing basis:

--Lead Agencies are required to act on the information provided by the family if it would reduce the family's copayment or increase the family's subsidy.

--Lead Agencies are prohibited from acting on information that would reduce the family's subsidy unless the information provided indicates that the family's income exceeds 85 percent of SMI for a family of the same size, taking into account irregular income fluctuations, or, at the option of the Lead Agency, if the family has experienced a nontemporary change in work, training, or educational status.

Section 809.73 related to parent reporting requirements is amended consistent with this guidance.

Section 809.73(a) is amended to require Boards to ensure that during the 12-month eligibility period, parents are only required to report items that impact a family's eligibility or that enable the Board or Board contractor to contact the family or pay the provider.

This is further clarified in §809.73(b), which is amended to state that parents shall report to the child care contractor, within 14 calendar days of the occurrence, the following:

--Changes in family income or family size that would cause the family to exceed 85 percent of SMI for a family of the same size;

--Changes in work or attendance at a job training or educational program not considered to be temporary changes, as described in §809.51; and

--Any change in family residence, primary phone number, or e-mail (if available).

The amendment extends the number of days to report from the current 10 calendar days to 14 calendar days. This will allow additional time for parents to report changes while also allowing sufficient time for Boards to make any requested changes in the parent share of cost or for other authorization changes to become effective, as well as sufficient time to adjust the parent's eligibility (if the reported change caused the family to exceed 85 percent SMI or constitutes a nontemporary change in activity status).

Because the CCDBG Act limits termination of eligibility for care to the parent's permanent cessation of work, training, or education activities, or the family exceeding 85 percent of SMI (taking into consideration fluctuations of income), §809.73 is also

amended to remove the provision that care may be terminated and costs may be recovered due to a parent failure to report a change in §809.73(b). However, the provision that failure to report a change may result in fact-finding for suspected fraud as described in Subchapter F is retained.

Section 809.73 is also amended to require Boards to allow parents to report, and require the child care contractor to take appropriate action, regarding changes in:

--income and family size, which may result in a reduction in the parent share of cost pursuant to §809.19; and

--work, job training, or education program participation that may result in an increase in the level of child care services.

The CCDBG Act requires that reporting requirements during the 12-month period do not constitute an undue burden on working parents, and the NPRM clarifies that the reporting requirements must only be on information that affects eligibility or the ability to contact the parent and pay the provider. Therefore, the Commission emphasizes that Boards must not require parents to report any changes during the 12-month period other than those specified in amended §809.73(a) - (b).

The Agency will work with Boards to provide technical assistance on establishing clear and family-friendly information for parents on when they are required to report income and family changes.

Additionally, the Agency will work with Boards to provide reports and tools, including tools associated with wage records and a child's attendance tracking, to assist Boards in identifying parents and families that:

--may have changes in income or family size that may have resulted in the family income exceeding 85 percent of the SMI; or

--may have experienced a nontemporary change in work, training, or education activities.

Implementation of the Reporting Requirements

The Commission clarifies that parents with children enrolled prior to the effective date of the rule amendments may be notified of the new parent reporting requirements at the parent's next scheduled redetermination. However, the standards for assessing any reported changes to the parent's eligibility as well as changes in the consequences for failure to report will be effective on the effective date of the amended rules. Therefore, the Board must ensure that if a parent fails to report a change that was required under the former rules, care shall not be terminated and recoupment is not required for this failure to report, subject to the requirements in Subchapter F regarding recoupments.

Comment:

Several commenters stated that the 14 calendar days to report changes seems irrelevant. While a reporting requirement is needed, since care will continue during the 12-month eligibility period, a time frame is not necessary. At whatever point the parent reports, fact-finding would have to occur to determine the start date of the change to determine eligibility. There is no adverse action that can occur if the parent does not report within 14 days.

One commenter recommended that the reporting requirement remain but remove the 14 days. The commenter also recommended that "parent shall" language be removed since there is no action (i.e., termination of services) that can be the result if the parent does not report.

Response:

The 14-day reporting requirement is to place the parent on notice that any changes that affect eligibility or that enable the Board or Board contractor to contact the family or pay the provider must be reported as soon as possible in order to allow appropriate time for the contractor to review and verify the documentation and to determine the appropriate action to take. If it is discovered, either upon eligibility redetermination or during the 12-month eligibility period, that a change affecting eligibility was not reported timely, then that failure to report may be grounds for fact-finding for suspected fraud.

Comment:

Several commenters suggested that parents report all changes and allow the contractor to determine whether or not that change impacts the family's eligibility. The commenters stated that it is easier for parents to remember to report all changes rather than tasking them with making the determination themselves as to whether a change may affect their eligibility. If the change reported does not constitute a change that impacts eligibility, no action will be taken by contractor staff. Encouraging parents to report all changes lowers their risk of receiving services for which they are not eligible. It could also impact the family positively because if they report a change that does not impact eligibility, it could still potentially reduce their parent share of cost or increase their level of subsidy. Since the preamble indicates that parents are required to report one type of change, and are encouraged to voluntarily report all other changes, it would benefit both the parent and contractor staff if given the flexibility to continue to ask (not require) parents to report all changes to the contractor.

Response:

The Commission declines to require that parents report all changes. The CCDBG Act states that any requirements for parents to provide notification of changes shall not constitute an undue burden on families. The Commission agrees that parents need clear instructions and guidelines on what information would rise to the level of a required report.

The Agency will work with Boards to provide clear income and family size levels that, if surpassed, would be over the 85 percent of the SMI eligibility requirement. Clear guidance should also be provided to parents regarding actions that would constitute a temporary change and not need to be reported. The Child Care Services Guide will include guidance for helping parents understand what is considered a temporary change.

Comment:

One commenter requested that Boards be allowed to sanction parents for any status changes that would affect eligibility that is not reported, such as changes in income, household size, and address.

Response:

The Commission notes that pursuant to §809.112, certain parental actions may be grounds for suspected fraud and cause for Boards to conduct fraud fact-finding or the Agency to initiate a fraud investigation. This will be discussed in greater detail in Subchapter F, Fraud Fact-Finding and Improper Payments.

Comment:

Two commenters asked if the various exception reports from Agency (UI Early Warning, Work & Training, Identity Mismatch, and Income Exceptions) will still be necessary.

One commenter also requested Board flexibility in continuing to contact parents when information available to the contractor (via TIERS, UI, or exception reports provided by the Agency) may indicate that the parent is facing an eligibility issue (such as loss of employment, a second job that puts them over the 85 percent of SMI guidelines, or has had a change in work, training, or education status).

Response:

The Commission agrees that these reports will continue to be very important tools that Boards should use to identify potential changes to the parent's work or income status that may have occurred during the 12-month eligibility period.

Additionally, the Commission agrees that parents must be contacted when information becomes available that may indicate that a family is no longer eligible. In fact, the Commission notes that the exception reports and data analysis tools should not be the sole source used to determine whether the parent has, in fact, experienced a change in income or a change in work, training, or education participation. The parent must be contacted and given the opportunity to explain the exception and submit documentation, if necessary, to demonstrate that the change did not result in the family exceeding 85 percent of SMI or did not result in a permanent cessation of work, training, or education activities.

Comment:

Several commenters inquired if the contractor receives information from a source other than the parent regarding potential eligibility issues, will the contractor be allowed to contact the parent to request additional information. Additionally, one commenter asked what consequences are allowed to be imposed for not responding to the inquiry within a set number of days.

Response:

The activities described in the comment are allowable. However, care cannot be terminated based solely on the reports or the parent's failure to respond to the request for information. The CCDBG Act and the NPRM state that once the child is determined eligible, the child is assumed to be eligible for the 12-month period.

If a parent does not respond to requests for information, then a Board may need to address this at either the 12-month redetermination or as part of a potential fraud fact-finding, or both. Additional guidance will be provided in the Child Care Services Guide.

Comment:

One commenter requested guidance on situations in which an individual on a temporary summer semester break intends to go back to school after the break, but then does not go back to school. Do they receive three months of continued care from the time school let out or from the time they decided not to go back to school? The commenter also asked what happens if a temporary break turns into a permanent end and is not reported.

Response:

The Commission has clarified in rule that a break between the spring and fall semesters would constitute a temporary break in activities. The three months of continued care would start from the date that the temporary break due to the summer semester change became a permanent change. In this example, the summer break is considered a temporary change, but the failure to return to school following this period would be the permanent change and child care would continue only for three months following the permanent change, namely, the failure to return to school. If the parent does not report the permanent change in status and this is discovered at eligibility redetermination, then the failure to report is grounds for fraud fact-finding.

Comment:

Several commenters inquired if it is the continued expectation that parents enrolled in a training institution be monitored by each semester, as they are now. The preamble noted that the enrollment information should be obtained from the training or education institution, *instead of requiring the parent to submit this documentation*. The commenters indicated that most training institutions in their area will not produce this type of enrollment information for their students.

The commenters noted that the preamble states that "Boards may develop procedures for confirming continued enrollment and attendance *during* the 12-month eligibility period…." The commenters requested clarification of the intent behind verifying this information when temporary changes do not impact the required 12-month eligibility period.

The commenters requested clarification on the statement that Boards may request that educational institutions and training providers confirm enrollment and resumption of training classes. Are Boards limited to collecting this information directly from educational institutions or may the information be requested from parents? Educational institutions are unlikely to release such information directly to Boards.

This issue is causing some confusion, as it would seem that if parents do not report a nontemporary cessation of education or training activities, and if they are not monitored by semester, the possibility of fraud review may increase. However, this seems to go against the 12-month eligibility determination philosophy.

Response:

Section 809.73 requires parents to report a nontemporary (permanent) change in the education status during the 12-month period. Section 809.51(a)(2)(C) has been amended to clarify that student holidays or breaks within a semester or between the fall and spring semesters, or between the spring and fall semesters, are temporary and do not need to be reported.

However, for parents solely in education activities, parents must report breaks in these education activities that are longer than the breaks described in §809.51(a)(2)(C) (e.g., breaks between the fall and summer semester or breaks that include two full semesters). Therefore, Boards may develop procedures for confirming during the 12-month eligibility period, including requesting that education institutions and training providers confirm enrollment at each semester and the resumption of training classes in order to determine that the parent has not had a nontemporary cessation of education or training activities. The Commission understands that educational institutions may not be able to provide such information. However, this is an allowable Board procedure.

Also, the resumption of enrollment after the nontemporary break between semesters does not need to be reported by the parent for continuation of care through the end of the 12-month period. The resumption of enrollment is only required at the 12-month redetermination period.

§809.74. Parent Appeal Rights

Section 809.74 is amended to clarify that parents may appeal the amount of any recoupment determined pursuant to Subchapter F of this chapter.

§809.75. Child Care during Appeal

Section 809.75 is amended to remove the provisions for not continuing care during a parent appeal as the reasons for terminating care provided in this section no longer apply.

Comment:

One commenter stated that his experience shows that parents who are ineligible choose to continue care regardless of the possibility of having to pay for child care. Commenters request that if a hearing officer affirms a determination of ineligibility that there be no recoupment owed by the parent.

Response:

The Commission declines to change the rule regarding repayment of child care provided during the appeal if the decision that the parent was ineligible for care is affirmed upon appeal. An affirmation of termination of care is a verification that the parent was not eligible to continue to receive services. The rule language at §809.71(13) also requires that parents be informed of the appeal rights, including that the cost of care during the appeal is subject to recovery. Failure to attempt recovery of payments for services for which the person was not eligible is not allowed.

Comment:

One commenter stated that the modified rule language implies that child care during an appeal is required and does not have to be requested by the parent. If the parent does request child care during an appeal, is it automatically approved? If the local review of the appeal process upholds the termination and the parent received child care during an appeal, how can we seek recoupment of these funds if the parent did not request child care during an appeal?

Response:

The Commission clarifies that the rule language has not changed regarding child care continuing during appeal. The language does not require that child care continue only if requested by the parent. The rule retains the statement that the cost of providing services during the appeal is subject to recovery if the decision is rendered against the parent. Rule language at §809.71(13) also requires that parents be informed of the appeal rights, including that the cost of care during the appeal is subject to recovery. Boards must inform parents of this and allow the parent the option of not continuing care during the appeal. If the parent agrees that child care should continue, then the rules require that care continue during the appeal.

Comment:

One commenter inquired if the Board can set local policy that states customers must pay this amount in full before they can apply to receive services again.

Response:

The Commission agrees and notes that §809.117, regarding recovery of improper payments, includes the requirement that payments made during the appeal in which the appeal is rendered against the parent are subject to full recovery in order for the parent to be eligible for future child care.

§809.76. Parent Responsibility Agreement

As stated previously, CCDBG Act §658E(c)(2)(N) states that each child who receives assistance will be considered to meet all eligibility requirements for such assistance and will receive such assistance for not less than 12 months before the state redetermines eligibility.

NPRM §98.20(b)(4) clarifies that the state may establish additional eligibility conditions, regarding the child's age, citizenship, residing in a family with an income that does not exceed 85 percent SMI, and residing with parents who are working or in job training or education, as long as the additional requirements do not impact eligibility other than at the time of eligibility determination or redetermination. Additionally, CCDBG Act §658E(c)(2)(N)(ii) and NPRM §98.21(d) require that Lead Agency eligibility redetermination requirements do not unduly disrupt parent work, training, or education activities.

The PRA in §809.76 requires that the parent shall:

--pursue child support by:

--cooperating with the Office of the Attorney General (OAG), if necessary, to establish paternity and to enforce child support on an ongoing basis by either:

--providing documentation that the parent has an open case with OAG and is cooperating with OAG; or

--opening a child support case with OAG and providing documentation that the parent is cooperating with OAG; or

--providing documentation that the parent has an arrangement with the absent parent for child support and is receiving child support on an ongoing basis;

--not use, sell, or possess marijuana or other controlled substances; and

--ensure that each family member younger than 18 years of age attend school regularly (unless exempt under state law).

Current §809.76(c) requires that the parent demonstrate compliance with these provisions within three months of initial eligibility. If the parent does not demonstrate compliance within three months, child care is required to end. Some Boards require parents to demonstrate compliance with the PRA at the time of initial eligibility.

Boards have reported that parents meet PRA requirements by opening an OAG case at initial determination, closing the case immediately following initial determination, and then reopening the case immediately prior to redetermination. This increases OAG's workload and requires Boards and Board contractors to track parent compliance with the PRA-without meeting the PRA's intent.

Therefore, §809.76 regarding the PRA is repealed, as the requirements of the provisions of the PRA:

--cannot be applied or enforced during the 12-month eligibility period;

--cause delays in determining eligibility; and

--cause errors in calculating income due to inconsistent receipt of child support.

Comment:

Several commenters expressed appreciation to the Commission for the Commission's willingness to review and accept the request to remove the PRA as a requirement for child care eligibility.

Response:

The Commission appreciates the comment.

Comment:

One commenter, although appreciative of the removal of the PRA, inquired if the Commission will take into consideration the impact of removal of PRA on performance since the removal of the PRA affects parent income, which could affect parent share of cost and the final amount the Board pays.

Response:

The Agency will monitor any impact to child care performance targets.

§809.77. Exemptions from the Parent Responsibility Agreement

Section 809.77 related to exemptions from the PRA is repealed.

§809.78. Attendance Standards and Reporting Requirements

CCDBG Act §658E(c)(2)(S) and NPRM §98.45(m) require implementation of provider payment practices that:

--align with generally accepted payment practices for children who do not receive CCDF funds; and

--support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences.

NPRM §98.45(m)(2) included four options that states may consider to meet the statutory requirement to support the fixed costs of providing child care by delinking payments from a child's occasional absence. The options include:

--paying providers based on a child's enrollment, rather than attendance;

--providing full payment to providers as long as a child attends for at least 85 percent of the authorized time;

--providing full payment to providers as long as a child is absent for five or fewer days in a four-week period; and

--requiring states that do not choose one of these three approaches to describe their approach in the State Plan, including how the approach is not weaker than one of the three listed above.

Currently, Chapter 809 requires Boards to establish a policy on attendance standards and procedures regarding reimbursement to providers for absence days. Chapter 809 requires Boards to terminate services if a child exceeds the Board-allowed number of paid absences during a year. If care is terminated due to excessive absences, then the parent must wait 30 days before reapplying for services.

Neither the CCDBG Act nor the NPRM grants states the authority to terminate care due to a child not meeting the state's attendance standards.

As described in §809.93, consistent with the requirements in the CCDBG Act and the NPRM, the Commission amends §809.93 to state that providers shall be reimbursed based on the child's enrollment, rather than daily attendance.

The Commission must ensure that authorizations for reimbursement based on enrollments do not result in underutilization of services, and must reduce the potential for waste, fraud, or abuse of public child care funds. The Commission establishes statewide attendance standards designed to encourage parents to fully use child care services. The rules also require that 12-month attendance standards must be met in order for the child to continue to be eligible at the 12-month recertification.

Section 809.78(a)(1) is amended to require that parents shall be notified that the eligible child shall attend on a regular basis consistent with the child's authorization for enrollment. Failure to meet monthly attendance standards may:

--result in suspension of care, at the concurrence of the parent; and

--be grounds for determining that a change in the parent's participation in work, job training, or an education program has occurred and care may be terminated pursuant to the requirements in §809.51(b).

Section 809.78(a)(2) establishes allowable attendance standards as fewer than:

--five consecutive absences during the month; or

--ten total absences during the month.

Section 809.78(a)(3) requires parents to be notified that if a child exceeds 65 total absences during the most recent 12-month period, then the child is not eligible for continued care at the 12-month eligibility redetermination period and shall not be eligible for a minimum of 12 months.

Section 809.78(a)(4) includes in the parent notification that child care providers may end a child's enrollment with the provider if the child does not meet the provider's established attendance policy. As will be discussed in Subchapter E, regarding provider reimbursement based on enrollment, a child's eligibility cannot end based on the number of absences. However, parents must be notified that a provider is allowed to discontinue enrollment of the child at the provider facility if the child does not meet attendance standards established by the provider.

Section 809.78(a) is also amended to remove the provisions that child care services may be terminated for absences or misuse of attendance automation policies. However, the rules at §809.78(a)(9) state that the parent or secondary cardholders giving the attendance card or personal identification number (PIN) to another person, including the provider, is grounds for a potential fraud determination pursuant to Subchapter F of this chapter.

Section 809.78(c) is added to state that Boards shall ensure that absences due to a child's documented chronic illness or disability or court-ordered visitation are not included in the number of absences in paragraphs (2) and (3) (related to monthly and the 12-month attendance standards).

Section 809.78(d) is added to state that when a child's enrollment has been ended by a provider in §809.78(d)(4), Boards shall work with the parent to place the otherwise eligible child in another eligible provider.

The Commission acknowledges that the rule amendments related to enrollments and absences will require substantial modifications to existing Board policies and procedures as well as changes to the Agency's information and attendance automation systems. The Agency will work with Boards regarding these changes and to develop necessary reports to assist Boards, parents, and providers in tracking attendance.

Comment:

Several commenters agreed that the goal of preventing potential waste, fraud, or abuse was to ensure that the child care authorizations are being used. The commenters also understood that

the CCDBG Act and the NPRM absences are not listed as an allowable termination of care reason during the 12-month eligibility period. Several commenters supported the development of statewide attendance standards designed to encourage parents to fully use child care services. One commenter stated that encouraging parents to maintain regular attendance for their child in a high-quality early education program results in stronger outcomes for children and families. The commenter was pleased to see that the Commission has considered multiple opportunities to quantify absences, and interpreted this as a commitment to supporting the development of the whole family and their needs outside of child care.

Response:

The Commission appreciates the comment.

Comment:

Many commenters expressed concerns regarding the lack of enforcement of attendance standards. The commenters stated that the enforcement mechanisms (suspension, determining a change in parents' activity participation) are not efficient or effective to enforce compliance with attendance reporting requirements or attendance standards.

One commenter pointed out that the Agency commented to ACF that attendance should be considered an eligibility requirement. While TWC provided comment to ACF requesting the consideration of termination of services due to excessive absences, without being able to end services, the additional 10 in a month or 41 in a year are not needed.

Many commenters requested that Boards be allowed to set local policy for redeterminations that consider whether or not attendance standards were met during the previous eligibility period.

Response:

The Commission understands the commenters' concerns. As one of the commenters pointed out, the Commission provided comments to the NPRM recommending that the regulations to allow states the flexibility to end services during the 12-month eligibility period for children and families that do not meet state attendance standards. However, pending the final rules, there is no statement in the CCDBG Act or the NPRM that expressly gives states this flexibility.

Regarding the recommendation that Boards be allowed to set local policy for redeterminations that consider whether or not attendance standards were met during the previous eligibility period, the Commission agrees that a child's attendance during the previous eligibility period should be taken into consideration at eligibility redetermination. However, the Commission does not agree that this should be established by Board policy. The Commission believes it is important to have statewide attendance standards in order to ensure that families and providers are treated consistently across the state regarding payments for absences and consequences for failure to meet attendance standards and reporting requirements.

Therefore, the Commission modified the proposed rules at §809.98(a)(3) to require that parents be notified that if a child is absent more than 65 days during the 12-month eligibility period, then the child is not eligible for continued care at the 12-month eligibility redetermination period and shall not be eligible for a minimum of 12 months.

The 65 total absences number is based on 75 percent attendance during a typical 12-month eligibility period of 260 authorized days. However, the Commission clarifies that the attendance standard is not 75 percent of any individual authorized enrollment. The attendance standard is fewer than 65 absences on any authorizations, including authorizations in which care may be for more than five days a week based on a parent's flexible work schedule or fewer than five days a week based on the parent's needs.

The 65-day attendance standard should not be confused with a provider's own attendance policies. As stated previously, individual provider attendance standards are at the discretion of the provider's operational policies. A provider could end enrollment for a child that does not meet the provider's attendance standards. However, if a provider ends the care due to violations of the provider attendance standards, the child care contractor must work with the parent to place the otherwise eligible child in another eligible provider. The Commission has added §809.78(d) to emphasize this point.

Comment:

Several commenters inquired if absences due to extenuating circumstances such as illness or absences due to court-ordered visitations would be included in the absence totals for the attendance standards. One commenter provided specific suggestions regarding the circumstances in which these absences would or would not be counted, including partially counting particular absences over the course of a particular period.

Response:

In order to ensure that the attendance standards are consistently applied and enforced, the Commission believes that the treatment of these types of absences should be included in Commission rules. Therefore, the Commission has added §809.78(c) to state that Boards shall ensure that absences due to a child's documented chronic illness or disability or court-ordered visitation are not included in the number of absences in §809.78(a)(2) - (3).

Comment:

Many commenters requested clarification regarding the use of suspensions during the 12-month authorization period as a method for enforcing attendance standards and requested guidance on how to implement suspensions. Several commenters requested that Boards be given local flexibility to define how the suspension process works in the workforce area since the proposed rules do not address this issue.

Response:

As noted earlier in the section entitled "Suspensions of Child Care during the 12-month Eligibility Period," the preamble to the NPRM notes that, consistent with §658E(c)(2)(N)(i) of the CCDBG Act, once determined eligible, the child "will receive such assistance" for the 12-month eligibility period, and "during the minimum 12-month eligibility period Lead Agencies also may not end or suspend child care authorization or provider payments due to a temporary change in a parent's work, training, or education status."

However, the preamble also notes that "despite the language that the child 'will receive such assistance,' the receipt of such services remains at the option of the family." The law does not require the family to continue receiving services nor would it force the family to remain with a provider if the family no longer chooses to receive such services.

Consistent with this guidance, the Commission modifies §809.78(a)(1) to require that the parent must concur with the suspension. The Board cannot suspend care without the agreement and concurrence of the parent. Suspension of care without the request or concurrence from the parent is not allowed during the 12-month eligibility period under the guidance provided by the NPRM.

Board child care contractors are encouraged to contact parents to determine the reason for the absences, including if the absences are due to a change in activity status.

Contractors should work with the parent, including sending letters to the parents, to encourage attendance, recommend potential suspensions or reduction in the authorization and remind the parent of potential consequences, including termination of care at the 12-month redetermination period with the child not being eligible for care for future child care services for 12 months. Boards and contractors are reminded that suspensions or reductions in the authorizations can only occur with the concurrence of the parent. This will also be clarified in the Child Care Services Guide.

Comment:

Several Boards pointed out that some Boards are not currently reimbursing providers for the parent's failure to report attendance and asked if these Boards would now be required to pay for the non-reported attendance.

Response:

As discussed in §809.93, provider reimbursement will be based on the child's monthly authorized enrollment, excluding periods of suspensions. Providers will be reimbursed for all authorized days, including absences and days in which the parent did not report attendance. Boards currently not reimbursing providers for non-reported attendance days must start reimbursing the providers under the new rules.

Comment:

Several commenters inquired if the parent's failure to report attendance using the child care attendance automation (CCAA) system would be counted as an absence. One commenter noted that often the five-day and 10-day consecutive absences are the result of the unavailability of the CCAA attendance card, as either the card has not been received by the parent or the card needs to be replaced.

Many commenters noted that the language in §809.78(a)(10) includes language that the failure to report attendance or the denial of the attendance report by the automated system "may" result in an absence counted toward the attendance standards. The commenters requested that Boards have the local flexibility to develop policy for how this will be counted; and, if so, that the guidance should be either added to the rule language or included in the Child Care Services Guide.

One commenter requested that if the intent is to include non-reported days as an absence, then language should be added to the rule stating that "absences and non-reported attendance" are counted as absences.

Response:

The Commission appreciates the comments, but declines to include rule language specifying that all non-reported attendance should be counted as an absence. As one commenter noted, the non-reported attendance could be the result of the inability to record attendance due to issues with the attendance card.

However, the Commission agrees that the procedures for including or excluding non-reported attendance as an absence should be included in the Child Care Services Guide. Currently, such guidance to Boards is provided in §E-804: "Board Absence Policies for Parent Failure to Report Attendance" of the Child Care Services Guide. The guidance requires Boards to ensure that the decision to include the non-reported day must take into consideration situations that are beyond the control of the parent. The guidance in the revised Child Care Services Guide will be consistent with this requirement.

Providers will also continue to be able to report attendance that the parent was unable to report due to the CCAA system.

The Commission will make modifications to §E-804 to reflect the new rules for Boards to ensure that their procedures for including non-reported days as an absence comply with the Child Care Services Guide.

Comment:

One commenter requested information regarding the methodology used for determining these allowable attendance standards, as the commenter believed the proposed 41 absences in a 12-month period seem excessive. The commenter stated that no employer would accept an employee being absent for 41 days. The commenter stated that this 12-month period absence limit seems too generous and wasteful of taxpayer funds, especially when other families will be on the child care services waiting list for services.

Response:

The proposed rule language allows for a total of 40 absences in 12-months. This equated to 85 percent attendance of the standard 260 annual child care days, which is approximately three days a month and is listed in the NPRM as the minimal acceptable annual attendance standard for providers to receive full payment.

Because the Commission has made a change as an enforcement mechanism of the attendance standards, the Commission believes it is necessary to increase the annual amount from 40 to 65 absences in a 12-month period. This is approximately five absences a month. Although this may not be an acceptable standard for adults in the workplace, the Commission believes that five absences over the course of a month is appropriate for children in a child care setting, particularly if the child's continued eligibility at the 12-month redetermination period is at stake if the annual amount is exceeded.

The Commission notes that rules specifically exclude absences due to a child's documented chronic illness and disability, but do not exclude all absences due to illnesses. Young children experience a higher rate of non-chronic illnesses, particularly during their early years, and the Commission believes it is important to account for the absences in the absence count, but allow for a reasonable threshold as to not jeopardize continued eligibility.

Additionally, the annual absence requirement takes into consideration authorizations in which care may be for more than five days a week based on a parent's flexible work schedule. The Commission recognizes that many parents have work schedules that may be seven days one week, three days another week, and four days in other weeks, and that these schedules are not established on a routine basis. The monthly authorization must

reflect this variation and the provider must make the space available to the child. Some absences on many of those authorized, but non-working days, are to be expected and the 65 total absences during the year account for these variations.

Comment:

Several commenters requested clarification as to whether care is to be terminated if the child does not meet the attendance standards in the rules. One commenter stated that if care cannot be terminated during the eligibility period, and the absences are only to alert the contractor to check into the parent's status, then this would appear to be a burden. Another commenter asked how absence letters will work with these changes.

Response:

The Commission emphasizes that the CCDBG Act and the NPRM do not allow for care to be terminated during the 12-month period for absences. Contractors should work with the parent, including sending letters to the parents, to encourage attendance, recommend potential suspensions or reduction in the authorization, and remind the parent of potential consequences, including termination of care at the 12-month redetermination period with the child not being eligible for care for future child care services for 12 months. Boards and contractors are reminded that suspensions or reductions in the authorizations can only occur with the concurrence of the parent. This will also be clarified in the Child Care Services Guide.

Comment:

Several commenters requested clarification regarding the rule language stating the parents must be notified that providers may end the child's enrollment with the provider if the child does not meet the provider's established policy regarding attendance. Several commenters inquired if the Board contractor is required to review all the provider attendance policies to ensure the provider is in compliance with this language.

One commenter asked if parents would be able to request a transfer if a provider ends child's enrollment due to absences.

Response:

The Board's child care contractor will not be responsible for maintaining copies of providers' attendance policies. If a provider policy is to require adherence to attendance standards, then the Board cannot require the provider to keep the child enrolled. It is not expected that Boards monitor provider policies to ensure the policies are equitably enforced. This notification to the parent is intended to ensure that, even though the child's eligibility cannot end due to absences, the parent must be notified that absences may result in the provider ending care if the child is not attending in accordance with the provider's attendance standards.

Parents will be able to transfer, and Boards should work with parents in finding placements for, the child. Boards should also work with the parent to determine the cause of the absences and recommend strategies to reduce absences.

Comment:

One commenter was appreciative of the statement in rule that providers may end care at the provider facility if absences exceed the provider policy.

Response:

The Commission appreciates the comment.

Comment:

One commenter requested clarification as to whether the attendance standards are based on one calendar month or 30 calendar days.

Response:

The time period specifies a month, not 30 days. This is to align with the monthly authorization.

Comment:

A commenter asked how Boards that pay providers weekly or biweekly should calculate the required attendance for payment to the providers. Rule states that providers are reimbursed on enrollment; however, there is also an attendance requirement for the family to meet. Please clarify whether these are two separate items and whether parents not meeting attendance requirements would not affect full enrollment payment to providers.

Another commenter asked how the absences affect payments. It appears that the Agency is considering funding based solely on enrollment, but an absence policy based on a percentage of the enrollment may have a financial impact on providers.

Response:

The Commission clarifies that payments on enrollments and the attendance standards are two separate issues. Payments to providers will be based on authorized enrollment, not daily attendance. Attendance tracking will help ensure that services are being used by alerting contractor staff to provide additional case management in situations in which a child is not regularly attending. Further, the annual attendance standard is taken into consideration at the eligibility redetermination.

Comment:

Many commenters questioned the continued use of CCAA. The commenters stated that to be fully consistent with CCDBG changes, it is recommended that the Commission eliminate any attendance standards, and that the $3 million currently budgeted for CCAA be reallocated to direct care and quality. Since providers are already required to track attendance as part of DFPS minimum standards, CCAA is a duplication. Furthermore, since using CCAA cannot be enforced during the 12-month eligibility period, it should be removed, like the PRA requirements. The change from paying providers based on authorized enrollment rather than attendance also supports the recommendation to stop using the CCAA system.

The commenters cited the policy brief on Attendance Policies and Systems authored by ACF Office of Child Care, which states, "Time and attendance systems should support program payment policies and goals, not drive them. IT systems should be flexible and cost-effective to maintain, and not act as impediments to change." The commenters stated that the CCAA system is neither flexible nor cost-effective. The commenters stated that there are other, more cost-effective attendance tracking systems available.

One commenter suggested that there may be a way to collaborate with Child Care Licensing at both the local and state levels to create a more robust provider fraud prevention program. The commenter pointed out that the entire public school system bases certain allocations on attendance, but the school administration is responsible for reporting 100 percent of its attendance, not parents.

Another commenter stated that child care centers located on military bases are having difficulty meeting the requirement for CCAA since the military will not allow a point-of-service machine to be connected to their system for security reasons.

Response:

Tracking and reporting attendance will continue to be important parts of child care services, and CCAA will continue to be used for this purpose. Particularly during the 12-month eligibility period, it is very important for the Agency, Boards, and contractors to be aware of changes and trends in a child's attendance in order to contact the parent to determine why absences are occurring and if, with the concurrence of the parent, changes need to be made in the monthly authorization in order to reduce the number of absences for authorized days.

Timely attendance reporting and tracking is also an important tool in identifying potential nontemporary changes in the parent work, training, and education status.

However, the Commission will work with Boards to gather input on any future recommended changes to the automated attendance system resulting from the changes in the rules.

SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

The Commission adopts the following amendments to Subchapter E:

§809.91. Minimum Requirements for Providers

CCDBG Act §658E(c)(2)(K) requires annual unannounced inspections of all CCDF providers for compliance with health, safety, and fire standards. Relative providers are exempt from this requirement. By state statute, listed family homes are not inspected by DFPS child care licensing (unless there is a report of abuse or neglect at the facility). Therefore, under the CCDBG Act, nonrelative listed family homes are not eligible to provide CCDF services. Therefore, the Commission amends §809.91(a)(3) and (b) to remove requirements for Boards choosing to allow nonrelative listed homes as eligible child care providers as these providers are no longer eligible to care for CCDF-subsidized children.

Section 809.91(f) is amended to clarify that foster parents who are also directors, assistant directors, or have an ownership in the child care center, may receive reimbursement if authorized by DFPS.

Comment:

One commenter strongly supported the amendment to remove nonrelative listed homes as eligible to care for CCDF-subsidized children. All of Texas' children deserve access to child care options that meet the standards of health and safety as confirmed through annual, unannounced site inspections. The commenter commended the state on recognizing the critical importance of DFPS licensing standards and monitoring. DFPS child care licensing establishes minimum standards and monitoring processes that ensure the health and safety of children in care. Investment of state and federal funds should be made in safe, quality early childhood programs that deliver educational outcomes.

Response:

The Commission appreciates the comment. The Commission also notes that the final rules have been modified from the proposed rules to include removing §809.91(a)(3), which gave Boards the option to allow nonrelative listed family homes. This provision was inadvertently retained in the proposed rules.

§809.92. Provider Responsibilities and Reporting Requirements

Section 809.92(b) is amended to remove the specific attendance reporting requirements for providers to:

--document and maintain a list of each child's attendance and submit the list upon request;

--inform the Board when an enrolled child is absent; and

--inform the Board that a child has not attended the first three days of scheduled care.

The implementation of the child care attendance automation system eliminates the need for providers to report this attendance to the Board. However, the Commission notes that removing the requirement from Chapter 809 that providers document and maintain a list of each child's attendance does not remove the DFPS child care licensing requirement for providers to maintain a daily sign-in sheet for all children enrolled at the facility.

Comment:

One commenter noted that the requirement to maintain attendance records is removed in the proposed rules. However, the commenter stated that the contractor uses the sign-in sheets required by Child Care Licensing as evidence in potential fraud cases and would like to continue to request the sign-in sheets that are required by Child Care Licensing.

Response:

The Commission clarifies that Boards may continue to request these sign-in sheets from providers as part of fraud fact-finding.

Comment:

One commenter requested clarification on the purpose of the requirement that providers report when the parent fails to pay the parent share of cost since Boards are not allowed to impose consequences to parents failing to comply. The only reason for providers, that we can see, is if Boards are required to pay the parent share of cost when parents fail to do so.

Response:

A Board may have a policy that prohibits transfers if a parent is not current on their parent share of cost (as long as this policy does not have the effect of terminating a child's care). A Board may also have a policy that reimburses the provider if the parent fails to pay the parent share of cost. Both of these policies depend on the provider's timely reporting to the child care contractor that the parent is not current on the parent share of cost pursuant to §809.93(b)(3).

The requirement that providers report this information to the contractor will be vital to ensuring that appropriate actions are taken with the parent, including potential temporary reductions in the parent share of cost. Boards will be able to better anticipate costs associated with "making the provider whole," and the contractor will be alerted to families that require outreach and case management.

The Child Care Services Guide will provide guidance on working with parents who are not paying their parent share of cost.

Comment:

While not stated in rule, there is a common understanding among the Board child care network representatives that the provider

may end services with the parent if the parent does not pay the parent share of cost. This is not based on proposed rule. Should it actually be considered, the environment of "provider hopping" will occur. The parent will not pay provider A. Provider A ends the services. Parent transfers to provider B, and it starts again.

The Agency provided comment to ACF that allows for termination of services for nonpayment of parent share of cost. That request is fully supported. The termination of services for nonpayment of parent share of cost, if allowed, is the best solution to support the providers and to support the parent. If the provider reports the nonpayment of parent share of cost appropriately, then the parent share of cost could be paid to the provider. The parent would then have services terminated or would pay the parent share of cost to the Board to have services continued.

If it remains that services cannot be terminated due to nonpayment of parent share of cost, then recommend that the rule remain as it is that the provider must report and the child care contractor works with the parent to pay the parent share of cost to the provider before any consideration of a transfer is given.

Response:

Pursuant to the NPRM, a child's care may not be terminated within the 12-month eligibility period for any reason other than income exceeding 85 percent of SMI for a family of the same size, or a permanent cessation of work, training, or education has occurred and three months of continuing care have been provided to allow the parent to resume the work, training, or education activity.

A Board may establish a policy prohibiting transfers when a parent has failed to pay his or her share of cost, as long as the policy does not have the effect of terminating care during the 12-month eligibility period.

Boards may enact policies to pay providers when parents fail to pay their share of cost. The Child Care Services Guide will provide guidance for contractor staff regarding parents who may qualify for a temporary reduction in their parent share of cost.

Comment:

One commenter noted that the Agency commented to ACF disagreement that states or local areas cannot allow providers to charge parents above the copay for provider mandatory fees, preferring that the decision should be based on local needs and provider base. Yet, the Agency issued Workforce Development (WD) Letter 33-13 implementing a methodology on calculating a provider's published rates, stating that the intent is to ensure that provider's published daily rates are consistently calculated across the state. The calculation includes enrollment fees, supply fees, and activity fees. If indeed there are additional mandatory fees, then all mandatory fees should be included in the standardized method of calculating daily rate. This would negate Agency disagreement that states or local areas cannot allow providers to charge parents above the co-pay for provider mandatory fees.

Response:

The calculation in the referenced WD Letter concerns the methodology for calculating an individual provider's published rate, which does require the inclusion of provider mandatory fees. However, this is not the same as the Board maximum rate. Board maximum rates may be higher or lower than an individual provider's published rate. If the Board maximum rate is lower than the provider's published rate, then the current rules retain the provision that a Board may prohibit providers from charging parents the difference between the lower Board maximum rate and the higher provider published rate. However, this should be a local decision.

§809.93. Provider Reimbursement

As explained in §809.78 regarding a child's attendance standards, CCDBG Act §658E(c)(2)(S) and NPRM §98.45(m) require implementation of provider payment practices that:

--align with generally accepted payment practices for children who do not receive CCDF funds; and

--support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences.

NPRM §98.45(m)(2) included four options that states may consider to meet the statutory requirement to support the fixed costs of providing child care by delinking payments from a child's occasional absence. The options include:

--paying providers based on a child's enrollment, rather than attendance;

--providing full payment to providers as long as a child attends for at least 85 percent of the authorized time;

--providing full payment to providers as long as a child is absent for five or fewer days in a four-week period; and

--requiring states that do not choose one of these three approaches to describe their approach in the State Plan, including how the approach is not weaker than one of the three listed above.

Currently, Chapter 809 requires Boards to establish a policy on attendance standards and procedures regarding reimbursement to providers for absence days. Chapter 809 requires Boards to terminate services if a child exceeds the Board-allowed number of paid absences during a year. If care is terminated due to excessive absences, then the parent must wait 30 days before reapplying for services.

Neither the CCDBG Act nor the NPRM grants states the authority to terminate care due to a child not meeting the state's attendance standards.

To ensure statewide consistency for families and statewide compliance to the requirements in CCDBG Act §658E(c)(2)(S) and NPRM §98.45(m), §809.93 is amended to implement a statewide policy that reimburses regulated providers based on the child's enrollment, rather than daily attendance. The rule language at §809.93(b) states that a Board or its contractor shall reimburse a regulated provider based on a child's monthly enrollment, excluding periods of suspension (at the concurrence of the parent).

Additionally, the Commission reletters §809.93(g) to §809.93(f) and amends the language to remove references to reimbursements based on the unit of services delivered. The amended language states that the monthly enrollment authorization is based on the unit of service authorized (either as an authorized part-day unit or an authorized full-day unit).

The rules retain the requirement that relative child care providers are not reimbursed for days on which the child is absent. The Commission retains this provision based on the contention that unregulated relative providers do not have the same fixed costs as regulated providers do in order to meet regulatory standards.

Comment:

One commenter noted that §809.93(b) states that providers will be reimbursed based on "monthly enrollment." However, §809.93(f) states that "reimbursement for child care is based on the unit of service delivered," which is then defined on a daily basis. Monthly enrollment implies that providers are paid their monthly rate for the entire month; "unit of service delivered" defined on a daily basis implies that providers are reimbursed a daily amount (current practice), whether based on enrollment or attendance. The commenter recommended that §809.93 should be modified to be clear on which basis providers are reimbursed.

Response:

The Commission appreciates the comment and has modified the language in §809.93(f) accordingly.

Comment:

One commenter strongly supported the rule change to reimburse a regulated provider based on a child's monthly enrollment authorization. As the Commission noted, CCDBG Act §658E(c)(2)(S) and NPRM §98.45(m) require implementation of provider payment practices that align with generally accepted payment practices for children who do not receive CCDF funds and support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences. This change will bring Texas into the forefront of states that are committed to ensuring equal access for children receiving subsidy.

The commenter would like to offer support, input, and feedback on any rules or guidelines needed to fully implement this payment structure. As this is a major change to existing practice that will greatly support currently participating providers and encourage new providers to participate in CCDF, the commenter also supports the Agency in any request for additional funding to comply with this requirement.

Response:

The Commission appreciates the comment.

Comment:

One commenter stated that with the 12-month eligibility period and care being paid based upon authorization, not on attendance, that greater consideration must be given to paying the early care and education providers at the beginning of each month based upon authorized days in the month. This would align the child care services with the early care and education industry. It would encourage more providers to participate, as the funds would be paid at the beginning of each month. This may also encourage providers to expand their infant and toddler capacity and to provide care during nontraditional hours because they would have the funds at the beginning of each month. They would be incentivized to work with the parents and the children to deliver stable, consistent, quality care in order to maintain the children in care and the payment upfront.

Response:

The Commission declines to make this change. It is a matter of generally accepted practice that public funds be expended after the authorized services are delivered in order to ensure greater integrity of the public funds and to minimize the amount that may be required to be recovered if spent improperly. Additionally, the authorization may change during the month due to the parent requesting an increase in services from part-time to full-time, a requested parent suspension of care, or the family's eligibility period ending during the month and the family is not redetermined as eligible. The payments made prior to these changes would need to be recovered.

Comment:

One commenter recommended that the Commission add language to support child care providers in managing fixed costs to include that "A Board or its child care contractor shall reimburse a regulated provider based on a child's monthly enrollment authorization, regardless of whether eligibility changes during the month." This change is especially impactful since daily attendance is no longer reported and many fixed costs recur monthly, such as rent.

Response:

The Commission declines to make this change. If the family eligibility changes during the month and the family is no longer eligible, then the authorization must end and the provider cannot be reimbursed.

Comment:

One commenter noted that this section requires Boards to ensure that providers are not paid for holding spaces open and requested clarification on the difference between paying to hold spaces open and paying for authorized enrollment when a child is not attending.

Response:

The Commission clarifies that paying a provider without an authorized enrollment would be considered paying a provider for holding a space open.

With an enrollment authorization, the Board is not paying for an open slot because the enrolled child fills the slot.

Comment:

Several commenters stated that this section prohibits child care services from ending because of attendance, but proposes to only pay providers 85 percent of the rate if the children do not meet the standards of attendance. The commenters stated that this would not allow provider to cover its fixed costs. The commenters highly object to that burden being placed on providers. And in many cases already, the provider is not being paid the published rate, but is being paid below that.

Response:

The Commission clarifies that the amended rule requires that payment be based upon authorized enrollment, not daily attendance. The Commission anticipates that, consistent with the requirement in the CCDBG Act, this will assist providers in meeting the fixed costs of providing care. The rules do not limit the payments to 85 percent of the rate if the children do not meet attendance standards.

§809.94. Providers Placed on Corrective or Adverse Action by the Texas Department of Family and Protective Services

Section 809.94(c) is amended to remove language stating that a parent receiving notification of a provider's corrective action may choose to continue care with the provider if the parent signs the notification acknowledging that the parent is aware of the provider status. The effect of this language is to end the child's care unless the parent signs the notification and acknowledges that the parent chooses to continue care at the facility. Under the CCDBG Act, care cannot end during the 12-month period for a

parent's failure to return the acknowledgement to continue care at the facility.

Therefore, §809.94(c) is amended to state that the parent may transfer the child to another provider without being subject to the Board's transfer policies if the parent requests the transfer within 14 calendar days of receiving the notification.

Comment:

One commenter pointed out that the parent must request the transfer within 14 business days of receiving the notification. The commenter stated that 14 business days is too long for the parent to pick another provider to transfer their children. It would be most beneficial if this rule were changed to 14 calendar days, which would align with the new parent reporting requirement.

Response:

This is an oversight in the proposed rules. The language should be 14 calendar days to align with the parent reporting requirements.

Comment:

One commenter expressed concern about removing the requirement that a parent must sign an acknowledgement that the parent is aware of the provider's licensing status. If something subsequently were to happen to the parent's child, then the Board would have no documentation to support the fact that the parent was informed of the provider status and chose to keep their child at the facility anyway.

One commenter asked if the case remains open if the contractor does not hear anything back from the parent after sending notice to the parent.

One commenter asked if a parent chooses to keep a child at a provider that is on corrective action would this be considered a voluntary withdrawal from child care services.

Response:

The Commission clarifies that care cannot be terminated due to the parent not returning the acknowledgement that the provider is on corrective action. The contractor should retain a copy of the notification sent to the parent, either on hard copy or electronic format, in order to document that the contractor provided notification to the parent.

Additionally, parents may choose to continue care in a provider that is on corrective action as corrective action does not disqualify a provider from serving subsidized children.

§809.95. Provider Automated Attendance Agreement

Section 809.95 is amended to clarify that provider misuse of attendance reporting and violation of the requirements in this section are grounds for fraud determination pursuant to Subchapter F of this chapter.

Comment:

One commenter strongly recommended the Commission clarify the reporting requirement for providers, specifically with regards to "authorized days," and how that differs from attendance, which providers will no longer be required to report.

Response:

The Commission clarifies that the authorized days consist of the number of days, the days of the week, and the level of care (part-day or full-day) that will determine the monthly authorization. The attendance associated with the authorized enrollment will be reported by the parent through the automated attendance. Although the providers are no longer required to report individual attendance days in order to be reimbursed, providers are required to notify the contractor if the authorized days in the automated system are different than the authorization received by the provider and the parent, in order to ensure that the proper number of days for reimbursement is correct.

Comment:

Since payment for services will be based on authorized days and not on attendance, the rules associated with CCAA usage seem overly harsh and in most cases not necessary. The CCAA system will primarily be used for tracking absence and non-records of attendance as a tool for the child care contractor to determine which parents need to be contacted.

Response:

CCAA will be used to track absences to determine if parents should be contacted in regards to attendance. However, the attendance system will also be used to verify that the child's authorized enrollment is being used for continued provider payments. Instances in which the parent removed the child from the provider without informing the child care contractor, yet the child's attendance is still being recorded through automated attendance and the provider continues to receive payments on the enrollment, will be grounds for determination of fraud fact-finding.

SUBCHAPTER F. FRAUD FACT-FINDING AND IMPROPER PAYMENTS

The Commission adopts the following amendments to Subchapter F:

§809.111. General Fraud Fact-Finding Procedures

Under *Program Integrity* on page 80488, the NPRM preamble provided the following clarification regarding the Administration for Children and Families' (ACF) intent regarding fraud and recoupments:

ACF would like to clarify that there is no Federal requirement for Lead Agencies to recoup CCDF overpayments, except in instances of fraud. We also strongly discourage such policies as they may impose a financial burden on low-income families that is counter to CCDF's long-term goal of promoting family economic stability. The Act affirmatively states an eligible child "will be considered to meet all eligibility requirements" for a minimum of 12 months regardless of increases in income (as long as income remains at or below 85 percent of SMI) or temporary changes in parental employment or participation in education and training. Therefore, there are very limited circumstances in which a child would not be considered eligible after an initial eligibility determination.

When implementing their CCDF programs, Lead Agencies must balance ensuring compliance with eligibility requirements with other considerations, including administrative feasibility, program integrity, promoting continuity of care for children, and aligning child care with Head Start, Early Head Start, and other early childhood programs. These proposed changes are intended to remove any uncertainty regarding applicability of Federal eligibility requirements for CCDF and the threat of potential penalties or disallowances that otherwise may inhibit Lead Agencies ability to balance these priorities in a way that best meets the needs of children.

Existing regulations at §98.60 indicate that Lead Agencies shall recover child care payments that are the result of fraud from the responsible party. While ACF does not define the term fraud and leaves flexibility to Lead Agencies, fraud in this context typically involves knowing and willful misrepresentation of information to receive a benefit. We urge Lead Agencies to carefully consider what constitutes fraud, particularly in the case of individual families.

In accordance with this guidance, §809.111 is amended to provide a definition of fraud in relation to child care services. The amended rule states that a person commits fraud if, to obtain or increase a benefit or other payment, either for the person or another person, the person:

--makes a false statement or representation, knowing it to be false; or

--knowingly fails to disclose a material fact.

This definition is consistent with the definition of fraudulently obtaining benefits under Texas Labor Code §214.001.

§809.112. Suspected Fraud

Section 809.112 is amended to clarify specific parental actions that may be grounds for suspected fraud and cause the Board to conduct fact-finding or the Commission to initiate a fraud investigation. These actions include:

--not reporting or falsely reporting at initial eligibility or at eligibility redetermination:

--household composition, or income sources or amounts that would have resulted in ineligibility or a higher parent share of cost; or

--work, training, or education hours that would have resulted in ineligibility; or

--not reporting during the 12-month eligibility period:

--changes in income or household composition that would cause the family income to exceed 85 percent of SMI (taking into consideration fluctuations of income);

--a permanent loss of job or cessation of training or education that exceeds three months; or

--improper or inaccurate reporting of attendance.

Comment:

One commenter suggested that the "90-day" reference in §809.112(b)(2) regarding a permanent loss of job be changed to "three months" to align with the language in §809.51(a)(2)(E) regarding other temporary cessations of activities.

Response:

The Commission agrees and for consistency has modified the language as suggested.

Comment:

One commenter pointed out that the last two actions considered as grounds for suspected fraud in §809.112(b)(2) should be separated by an "or," not "and." Using the word "and" implies that both instances have to be true to suspect fraud.

Response:

The Commission agrees and has modified the language as suggested.

Comment:

One commenter requested that the rules clarify what actions should be taken at redetermination if the contractor needs to process fact-finding for suspected fraud due to the parent failure to report changes.

Response:

Section 809.112 specifies parent actions that would be grounds for suspected fraud, which includes not reporting or falsely reporting family size or income that would result in the family being over 85 percent of SMI for a family of the same size. Section 809.112 also includes failure to report a permanent change in work, education, or training.

The Agency is developing procedures regarding fact-finding actions to determine fraud and provide guidance through a WD Letter or in the Child Care Services Guide.

Comment:

One commenter recommended the household composition be defined based upon marriage certificates, public records, legal and financial records, and client admittance.

Response:

The definition of a family in §809.2 has been changed to include marriage, including common-law marriage.

Comment:

One commenter stated that further fact-finding may be initiated if the parent entered a legal union of matrimony during the 12-month eligibility period and fails to disclose a change in household composition at eligibility redetermination.

Response:

If the marriage increased the family size, then this would be considered a change of family size that must be reported. If two unmarried parents reported as residing together at eligibility, then both parents would be included in the family size. The couples getting married during the 12-month eligibility period would not change the family size. However, if the marriage increased the family size and income, then that must be reported and would be subject to fraud fact-finding.

Comment:

One commenter recommended that if a parent does not report a change in income or household composition that causes the family income to exceed 85 percent of SMI, this failure to report should not be considered grounds for fraud, as the family may not be aware of the SMI guidelines. It is the parent's responsibility to ensure such changes are reported at initial eligibility and eligibility redeterminations.

Response:

The Commission understands the concern that a parent may not be fully versed in the specific income calculation used to determine eligibility or if a change in activity status constitutes a non-temporary change. The Agency will work with Boards to provide clear information to parents regarding the family size and income amounts that must be reported if exceeded, and to provide clear guidance on changes that are considered temporary changes.

Comment:

One commenter requested clarification on what constitutes improper reporting of attendance described in §809.112(b)(2)(C).

Response:

Improper reporting of attendance includes misuse of the attendance automation system and reporting of attendance that did not occur.

§809.113. Action to Prevent or Correct Suspected Fraud

Section 809.113 is amended to remove the provision that a child care contractor may take certain actions if a provider or parent has committed fraud. Although a Board's child care contractor is expected to take these actions, the language implied that the contractor determines which action to take without the involvement of the Board or the Commission.

Amended language in §809.113 clarifies that actions taken against a provider or parent shall be consistent with and pursuant to Commission policy.

Further, §809.113 is amended to include the following options:

--A provider may be prohibited from future eligibility to provide Commission-funded child care services; and

--A parent's eligibility may be terminated during the 12-month eligibility period if eligibility was determined using fraudulent information provided by the parent.

Comment:

One commenter requested clarification on §809.113(b)(4) regarding termination of a parent's care during the 12-month eligibility period, if eligibility was determined using fraudulent information provided by the parent. The commenters asked if this would require the appeal or fraud review to take place first before terminating the parent's care. Would fraud have to be confirmed first before terminating the parent's care or can the parent be terminated for suspected fraud?

Another commenter asked if a parent is found to have committed fraud, is the Board required to give 15 days' notice of termination or is the care terminated immediately.

Response:

The language in §809.113(b) states that the actions are based on a finding of fraud. A finding of fraud would be a fraud determination. The required 15-day notification must be provided, and the parent must be allowed to appeal the decision as required in §809.74.

Comment:

One commenter recommended that to achieve the explanation in the preamble, it is recommended that the revision be, "The Commission, Board, *or Board's child care contractor (with Board approval)…*"

Another commenter recommended that the wording in §809.113 (a) and (b) be modified to read, "the Commission, Board, or Board's child care contractor at the direction of the Board…" in recognition of the fact that the contractor is expected to take these actions while addressing the concern that they should not be taken without the involvement of the Board or the Commission.

Response:

The Commission declines to make this change. The intent of the rule language in §809.113 is to list actions that may be taken against a provider or parent for a finding of fraud. The decision on the actions taken is the responsibility of the Board, not the Board contractor. The contractor may present the results of the fact-finding to the Board and recommend that the Board determine that fraud occurred. The Commission understands that the contractor will ultimately implement the action as determined by the Board regarding a finding of fraud, but the intent of the language is to establish that the Commission or the Board, not the contractor, will take action regarding fraud determinations.

Comment:

One commenter requested clarification on what is considered fraud and provided specific scenarios and inquired if those scenarios would be considered fraud and the funds subject to recovery.

Response:

The Agency will develop guidelines and criteria for fraud determinations. RID will continue to provide training to Boards and Board contractors on fact-finding.

§809.115. Corrective Adverse Actions

Section 809.115 is amended to remove §809.115(b)(4) to remove termination of child care services as a possible corrective action for parents' noncompliance with this chapter.

Comment:

One commenter requested that a list of corrective actions for parents be provided as was done for providers in §809.115(b). One commenter asked if giving a CCAA card or PIN to a provider are the only parent actions for which Boards may take corrective actions against parents.

Response:

The actions taken against a parent are included in §809.117(d) and involve recovery of improper payments for instances:

-- involving fraud;

-- in which the parent has received child care services while awaiting an appeal and the determination is affirmed by the hearing officer; and

-- in which the parent fails to pay the parent share of cost and the Board's policy is to pay the provider.

Comment:

One commenter requested clarification on whether or not Boards have local flexibility to impose sanctions on parents for other reasons at the discretion of the Board.

Response:

Boards may only take corrective action as allowed under Subchapter F. Any termination of care within the 12 months must be in compliance with this subchapter.

Comment:

One commenter stated that the corrective actions for the CCAA card seem overly harsh and in most cases not necessary. The CCAA system will primarily be used for tracking absence and non-records of attendance as a tool for the child care services contractor to determine which parents need to be contacted. There are no corrective actions that can be taken against the parent for non-usage if the parent is and remains eligible for services.

Response:

In this subchapter, the definition of "fraud" includes knowingly making a false statement or declaration in order to obtain or in-

crease payments either for the person or another person. Knowingly making false attendance reporting in order to bypass the attendance standards with the goal of continuing care at the next eligibility redetermination could be considered grounds for a finding of fraud.

§809.116. Recovery of Improper Payments

Section 809.116 is repealed and combined with §809.117.

§809.117. Recovery of Improper Payments to a Provider or Parent

Section 809.117 is amended to clarify the circumstances in which parents are required to repay improper payments. The language clarifies that a parent shall repay improper payments only in the following circumstances:

--Instances involving fraud;

--Instances in which the parent has received child care services awaiting an appeal and the determination is affirmed by the hearing officer; or

--Instances in which the parent fails to pay the parent share of cost and the Board's policy is to pay the provider for the parent's failure to pay the parent share of cost.

Section 809.117 is amended to prohibit a parent subject to the repayment provisions above from future child care eligibility until the repayment amount is recovered, provided that the prohibition does not result in a Choices or SNAP E&T participant becoming ineligible for child care.

A technical amendment to §809.117(e) is made to change the word "prepayment" to "repayment."

Comment:

One commenter asked if upon finding an eligibility error that resulted in the customer receiving services for which they were not eligible, whether contractors will be able to discontinue services or is the customer still entitled to receive a full 12 months of services. Additionally, the commenter asked who would be responsible for paying back the improper payment.

Response:

The actions taken and any possible recoupments will be included in Agency guidelines regarding fraud determinations and recoupments that are currently under development.

Comment:

One commenter stated that to align with the proposed change to not recoup overpayments from parents due to not timely reporting changes, it is recommended that contractors not be assessed disallowed costs from overpayments due to unintended errors.

The commenter stated that this is particularly true during this transition period of enacting major changes, including 12-month certifications, and enhanced quality assurance will need to be developed. To allow time for training and review processes to be fully implemented, it is recommended that contractors be exempt from disallowed cost charges so resources can be devoted to areas that benefit families. These include training staff on new rules that better adhere to the interests of the children and internally monitoring cases to ensure new rules are being administered accurately. Uniform statewide training is also recommended, given the significant changes being proposed to Chapter 809.

Response:

The Agency will provide training on the new requirements and new processes and will provide technical assistance to Boards and contractors on the new requirements. However, the Agency cannot exempt contractors from disallowed costs, even during the implementation period. Any findings of disallowed costs due to contractor error will be handled in accordance with Agency policy.

Comment:

One commenter noted that §809.117(d)(2) states that improper payments should be repaid in "instances in which the parent has received child care services awaiting an appeal and the determination is affirmed by the hearing officer." One commenter asked if this refers to the first step of the appeal process--the local review--or the second step of the appeal process--the Board level hearing--or both.

Are parents required to repay the cost of child care during an appeal if the termination is upheld even with the first level of appeal as they do now?

Response:

The repayment amount will be based on the final appeal determination.

Comment:

Several commenters asked if the Board's current process of using repayment schedules (payments received over a period of time) and allowing parents to remain in care as long as they are paying on their repayment schedules will still be allowed.

The current proposed rule does not allow for parents who are complying with their recoupment payment plan to be eligible to receive services. Under the current proposed rule, if a Choices or SNAP E&T participant receives services and then becomes eligible for At-Risk child care services, the parent would have to be denied under current proposed rule because the recoupment amount has not been paid in full.

One commenter recommended to allow for eligibility for services if a parent is complying with recoupment payments.

One commenter asked for clarification if the language in §809.117(e) means the repayment must be paid in full prior to determination of eligibility.

Response:

Full payment must be made in order for the parent to be eligible for future child care at the eligibility redetermination or at the next time the parent applies for care. This is necessary due to the 12-month eligibility period and the requirement that care cannot be terminated during the eligibility period. There is a possibility that a parent may make one payment at the beginning the repayment plan in order to be determined eligible, then not make a payment for the remainder of the eligibility period.

Comment:

One commenter inquired as to whether Boards have local flexibility on how to handle recoupments owed under current rules. If Boards do not have flexibility, the commenter requested guidance on how to handle current recoupments effective October 1, 2016.

Response:

As stated previously in the discussion in §809.111 regarding general fraud fact-finding procedures, there is no federal requirement for Lead Agencies to recoup CCDF overpayments, except in instances of fraud. However, the Commission is obligated to ensure that child care funds are effectively and efficiently targeted toward eligible low-income families. As noted in the NPRM preamble, when implementing CCDF program, Lead Agencies must balance ensuring compliance with eligibility requirements with other considerations, including administrative feasibility and program integrity. The Commission has long had a strong focus on program integrity and a significant Rapid Process Improvement review is underway to streamline and standardize Boards' fraud fact-finding investigations and adverse action determination procedures. As Agency and Board procedures become more clear and efficient, recoupment efforts will become more focused on fraud detection.

To ensure that recoupment of amounts owed prior to the effective date of these rules are consistent with the revised Agency and Board fraud-related standards moving forward, the Commission proposes to limit consideration during eligibility determination and redetermination of prior recoupments solely to debts from court-ordered restitution. Therefore, amounts owed other than those that are court-ordered restitution cannot be considered during eligibility redetermination.

GENERAL COMMENTS

Comment:

The Commission received many comments from Boards as well as from the Board Child Care Network in support of the changes to ensure continuity of care. However, the commenters were also concerned that many of the changes resulting from the CCDBG reauthorization will make it even more difficult for Boards to accurately forecast expenditures in the first couple of years, such as reductions in parent share of cost, transfers between workforce areas, and the requirement to fund all former DFPS children with CCDF funds for the remainder of the eligibility period. Since DFPS families do not have a parent share of cost, it will be more expensive to serve these families compared to At-Risk families. Additionally, potential changes in the methodology for calculating income are likely to reduce parent shares of cost resulting in higher Board costs. Over half of the Boards currently do not reimburse providers for non-attendance days and the change to reimbursing providers based on authorized enrollment will further increase the amount of funds needed to provide care for these Boards. These factors, along with higher utilization rates, will present new challenges to Boards in managing funds. These factors may necessitate the need of Boards to terminate services rather than exceed their child care allocations.

One Board recommended that the Agency develop specialized technical assistance in this area and that adequate resources be made available to develop and run specialized or canned reports.

The child care network and several Boards recommended that the ability of Boards to end services in order to stay within budget be added to the Chapter 809 rules.

Response:

The Commission appreciates the comments and understands the concerns mentioned. The Agency will closely monitor the impact of the changes to cost and.

The Commission will also provide technical assistance and specialized data analysis as requested to Boards on an individual and group basis in order to develop strategies and identify best practices during the implementation of the rules.

Regarding the recommendation to end services in order to stay within budget, CCDBG Act 658E(c)(2)(N) states that the child will receive assistance for not less than 12 months "before the State or designated local entity redetermines the eligibility of the child under this subchapter." Additionally, the Act further states that there are procedures in place ". . . to ensure that working parents (especially parents in families receiving assistance under [TANF] are not required to unduly disrupt their employment in order to comply with the State's or designated local entity's requirement for redetermination of eligibility for assistance in accordance with this subchapter."

The CCDBG Act promotes continuity of services and does not provide for dropping an otherwise eligible child for continued care at redetermination.

The Agency's child care rules reflect this intent. Section 809.54(b) states that "nothing in this chapter shall be interpreted in a manner as to result in a child being removed from care." Additionally, §809.50 regarding At-Risk child care specifically states that a parent is eligible under this section "at eligibility determination *and* at eligibility redetermination," if the child and the family meet the eligibility requirements.

Comment:

One Board commented that it supports the concept of continuity of care; however, as the Agency has acknowledged in the preamble to §809.44 related to calculating family income, these changes, as well as changes to other rules (in particular, those related to assignment of parent share of cost and serving populations not required to pay parent share of cost), may result in increased costs of care and reduce the number of children the Board may be able to serve.

The Board is grateful to see that the Agency plans to perform ongoing analyses of these and other factors that may affect performance and be open to making adjustments accordingly, especially since remedies once available to Boards for managing over expenditures (such as termination policies) are no longer allowable and are, therefore, unavailable as an option for mitigating risk.

Response:

The Commission appreciates the comment.

Comment:

Commenters expressed concern about the deadline to implement the reauthorization and new state rules on October 1, 2016. The amended rules and the income calculation redesign constitute major operational changes that will require changes to processes, systems, customer and provider communications, and finally training for staff. In the meantime, customers needing to be recertified receive notices 20-45 days in advance, depending on the region. In some cases this is well before final rules are even adopted. In order to ensure clear communication to customers and ensure that the rules are implemented appropriately, we would request that the rules be phased in starting on October 1, 2016, and that time be allowed to implement the changes required.

Response:

The Commission understands the concern and is planning to provide training webinars in September in preparation for the October 1, 2016, rule implementation. Training and technical assistance will also be provided throughout the 2017 Board contract year. Additionally, the Agency has issued guidance to Boards that the rules in effect prior to the effective date of these amendments allow Boards to establish their own eligibility periods. Therefore, Boards may extend the eligibility periods of children in care prior to the effective date of these rules in order to ensure minimum disruption to service delivery and to allow time for Board and Board contractors to receive training on the new rules and to modify processes and procedures.

Comment:

One commenter was "overwhelmingly excited" to see the changes coming and cannot wait until October 1, 2016. The commenter has used child care services for several years and thinks it is a great program.

Response:

The Commission appreciates the comment.

Comment:

Several commenters noted that scattered throughout the document are limitations or time frames when parents can report changes, request a transfer after the provider is placed on corrective action by DFPS, etc. However, these date limitations do not appear to be consistent and make the rules more challenging than necessary. Additionally, sometimes the term "calendar days" is used, while other times, the term "business days" is used. Using "calendar days" is our preferred method. Consistency with limitations and time frames among all of the sections of the proposed rules would be appreciated (if allowable).

Response:

The Commission appreciates the comment. Generally, the time frames in the rules are "calendar" days, and the rules will be modified to make this clarification, where applicable. However, to account for the weekend and to allow the greatest amount of time possible, deadlines of five days or fewer will remain "business days."

Comment:

One commenter appreciated the opportunity to provide comment on proposed rule changes. The commenter believes that 30 days is insufficient time to thoroughly review each proposed rule and suggests rules that address the intent and implementation of the Reauthorization Act of 2014. These 30 days have been the first opportunity for the public to provide comments. Given the sweeping changes that the Act allows, the commenter respectfully requests that the Commission and/or Boards host forums to receive input from parents, providers, private and public entities, and early care and education associations. Guidelines may have to be issued in order to comply with an October 1, 2016, implementation date but after that, host public forums--gather the input from the public on how they see the future implementation of the CCDF rules in Texas.

Response:

The Commission appreciates the comment and thanks the commenter for reviewing the proposed rules and providing input. The Commission encourages input from all stakeholders regarding the Child Care Services program.

Comment:

One provider submitted that the provider has always been willing to be paid less for the sake of these families and children and over the years have seen families use the system and then get out of it, making room for others and being successful.

The provider reported seeing much abuse by parents who fail to record attendance, fail to turn in their paperwork and are then removed from the system, but get back on and the cycle continues. The commenter believes there should be some accountability for the parent to do what is required, and the penalty should not be placed on the provider who is already not being compensated at the rate they are charging. If an open child support case is no longer required, allowing parents to neglect the cost and care of their child, then the burden falls on the taxpayer.

The provider is supporting the current workforce by providing care for young children as well as educating the young children in care to become the workforce of tomorrow.

The commenter stated that parents should be required to attend education classes, parenting classes, budgeting classes, and self-improvement classes, if they are allowed to remain in the system. The provider is required to train staff and follow all the rules in order to care for children. Parents should have to do the same.

The commenter also stated that parents complain about having to pay their copay amounts. Many have an entitlement mentality. The commenter stated the understanding that many Child Care Services customers have little education or life skills, but wondered when the cycle will be broken if we continue to enable parents to remain in the cycle their parents were in.

There should be a limit of how long parents are allowed to stay in the system. If parents knew they would never receive funds after a certain amount of time, perhaps they would be more diligent in becoming self-sufficient.

Response:

The Commission appreciates the comments and appreciates the challenges faced by providers. The Commission has implemented several initiatives to assist child care providers with funding and professional development to improve the quality of child care services.

Additionally, the Agency strives to support the fixed costs of providing subsidized child care services by paying providers on enrollment rather than daily attendance.

The Commission appreciates the commenter's support for the current workforce and helping to develop and educate the future workforce. The 12-month eligibility period and the emphasis on continuity of care will assist children in obtaining stable and consistent care and early education opportunities. The consistent and stable care will also assist parents in obtaining and maintaining consistent and stable employment to lead to self-sufficiency.

COMMENTS WERE RECEIVED FROM:

Rachel Garcia, Senior Operations Manager, Lower Rio Grande Valley

Sharon Felderhoff, Workforce Texoma Board of Directors

Julie Craig, Child Care Contracts Manager, Texoma

Marsha Lindsey, Deputy Director/EO Officer, Workforce Solutions Texoma

Dr. Jeremy P. McMillen, President, Grayson College

Angela Magers, Director, Montessori Academy of North Texas

Kelly Langley

Tammy Flores

Debra English

Shannon Richter, Contract Manager, Workforce Solutions Rural Capital Area

Kelley Fontenot, Child Care Manager, North Central Texas Council of Governments, Workforce Solutions for North Central Texas

Shari Anderson, VP Child Care Assistance, ChildCareGroup

Shawn Garrison, Child Care Policy Analyst, Workforce Solutions Alamo

Rita Morris, Director of Child Care Management Services, Child Care Associates (Tarrant County)

Pam McPeak, Owner and Executive Director, Little People's Learning Center

Sandy Balk

Kerry Echard

Workforce Solutions Concho Valley

Workforce Solutions of West Central Texas

City of San Antonio, Workforce Solutions Alamo's child care contractor

Kathy Talbert, Owner/Director, Little Cougar, Inc.

September Jones, Government Relations Manager, KinderCare Education, LLC

Sharron Benson Powell, Houston-Galveston Area Council, Workforce Solutions Gulf Coast

Janet Bono, Workforce Services Program Administrator, Workforce Solutions Borderplex

YWCA El Paso

Workforce Solutions Northeast Texas

Rosa Hernandez, Workforce Solutions South Plains

Elaine Clark, Child Care Programs Manager, Workforce Solutions Capital Area

Julie Talbert, Manager of Child Care & Public Transportation, Workforce Solutions for the Heart of Texas

Marvin Albright, Nomah Albright, Alison Albright, Imelda Davila-Leon, Marissa Hudler, and Todd Hudler

Neil Hanson, Senior Director of Public Sector Solutions, Neighborhood Centers Inc.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §809.2

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The adopted rule affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.2. Definitions.

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

(1) Attending a job training or educational program--An individual is attending a job training or educational program if the individual:

(A) is considered by the program to be officially enrolled;

(B) meets all attendance requirements established by the program; and

(C) is making progress toward successful completion of the program as determined by the Board upon eligibility redetermination as described in §809.42(b).

(2) Child--An individual who meets the general eligibility requirements contained in this chapter for receiving child care services.

(3) Child care contractor--The entity or entities under contract with the Board to manage child care services. This includes contractors involved in determining eligibility for child care services, contractors involved in the billing and reimbursement process related to child care subsidies, as well as contractors involved in the funding of quality improvement activities as described in §809.16.

(4) Child care services--Child care subsidies and quality improvement activities funded by the Commission.

(5) Child care subsidies--Commission-funded child care reimbursements to an eligible child care provider for the direct care of an eligible child.

(6) Child experiencing homelessness--A child who is homeless as defined in the McKinney-Vento Act (42 U.S.C. 11434(a)), Subtitle VII-B, §725.

(7) Child with disabilities--A child who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Major life activities include, but are not limited to, caring for oneself; performing manual tasks; walking; hearing; seeing, speaking, or breathing; learning; and working.

(8) Educational program--A program that leads to:

(A) a high school diploma;

(B) a General Educational Development (GED) credential; or

(C) a postsecondary degree from an institution of higher education.

(9) Family--Two or more individuals related by blood, marriage, or decree of court, who are living in a single residence and are included in one or more of the following categories:

(A) Two individuals, married--including by common-law, and household dependents; or

(B) A parent and household dependents.

(10) Household dependent--An individual living in the household who is one of the following:

(A) An adult considered as a dependent of the parent for income tax purposes;

(B) A child of a teen parent; or

(C) A child or other minor living in the household who is the responsibility of the parent.

(11) Improper payments--Any payment of CCDF grant funds that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements governing the administration of CCDF grant funds and includes payments:

(A) to an ineligible recipient;

(B) for an ineligible service;

(C) for any duplicate payment; and

(D) for services not received.

(12) Job training program--A program that provides training or instruction leading to:

(A) basic literacy;

(B) English proficiency;

(C) an occupational or professional certification or license; or

(D) the acquisition of technical skills, knowledge, and abilities specific to an occupation.

(13) Listed family home--A family home, other than the eligible child's own residence, that is listed, but not licensed or registered with, the Texas Department of Family and Protective Services (DFPS) pursuant to Texas Human Resources Code §42.052(c).

(14) Military deployment--The temporary duty assignment away from the permanent military installation or place of residence for reserve components of the single military parent or the dual military parents. This includes deployed parents in the regular military, military reserves, or National Guard.

(15) Parent--An individual who is responsible for the care and supervision of a child and is identified as the child's natural parent, adoptive parent, stepparent, legal guardian, or person standing in loco parentis (as determined in accordance with Commission policies and procedures). Unless otherwise indicated, the term applies to a single parent or both parents.

(16) Protective services--Services provided when:

(A) a child is at risk of abuse or neglect in the immediate or short-term future and the child's family cannot or will not protect the child without DFPS Child Protective Services (CPS) intervention;

(B) a child is in the managing conservatorship of DFPS and residing with a relative or a foster parent; or

(C) a child has been provided with protective services by DFPS within the prior six months and requires services to ensure the stability of the family.

(17) Provider--A provider is defined as:

(A) a regulated child care provider as defined in §809.2(18);

(B) a relative child care provider as defined in §809.2(19); or

(C) a listed family home as defined in §809.2(13), subject to the requirements in §809.91(b).

(18) Regulated child care provider--A provider caring for an eligible child in a location other than the eligible child's own residence that is:

(A) licensed by DFPS;

(B) registered with DFPS; or

(C) operated and monitored by the United States military services.

(19) Relative child care provider--An individual who is at least 18 years of age, and is, by marriage, blood relationship, or court decree, one of the following:

(A) The child's grandparent;

(B) The child's great-grandparent;

(C) The child's aunt;

(D) The child's uncle; or

(E) The child's sibling (if the sibling does not reside in the same household as the eligible child).

(20) Residing with--Unless otherwise stipulated in this chapter, a child is considered to be residing with the parent when the child is living with and physically present with the parent during the time period for which child care services are being requested or received.

(21) Teen parent--A teen parent (teen) is an individual 18 years of age or younger, or 19 years of age and attending high school or the equivalent, who has a child.

(22) Texas Rising Star program--A voluntary, quality-based rating system of child care providers participating in Commission-subsidized child care.

(23) Texas Rising Star Provider--A provider certified as meeting the TRS program standards. TRS providers are certified as one of the following:

(A) 2-Star Program Provider;

(B) 3-Star Program Provider; or

(C) 4-Star Program Provider.

(24) Working--Working is defined as:

(A) activities for which one receives monetary compensation such as a salary, wages, tips, and commissions; or

(B) participation in Choices or Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) activities.

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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Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
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For further information, please call: (512) 475-0829

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40 TAC §§809.13, 809.15 - 809.17, 809.19, 809.20

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The adopted rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.19. Assessing the Parent Share of Cost.

(a) For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically, §800.58, Child Care), including local public transferred funds and local private donated funds, as provided in §809.17, the following shall apply.

(1) A Board shall set a parent share of cost policy that assesses the parent share of cost in a manner that results in the parent share of cost:

(A) being assessed to all parents, except in instances when an exemption under paragraph (2) of this subsection applies;

(B) being an amount determined by a sliding fee scale based on the family's size and gross monthly income, and also may consider the number of children in care.

(C) being assessed only at the following times:

(i) initial eligibility determination;

(ii) 12-month eligibility redetermination;

(iii) upon the addition of a child in care;

(iv) upon a parent's report of a change in income, family size, or number of children in care that would result in a reduced parent share of cost assessment; and

(v) upon resumption of work, job training, or education activities following temporary changes described in §809.51(a)(2) and upon resumption of work, job training, or education activities during the three-month continuation of care period described in §809.51(c); and

(D) not increasing above the amount assessed at initial eligibility determination or at the 12-month eligibility redetermination based on the factor in subparagraph (B) of this paragraph, except upon the addition of a child in care as described in subsection (a)(1)(C)(iii) of this section.

(2) Parents who are one or more of the following are exempt from paying the parent share of cost:

(A) Parents who are participating in Choices or who are in Choices child care described in §809.45;

(B) Parents who are participating in SNAP E&T services or who are in SNAP E&T child care described in §809.47;

(C) Parents of a child receiving Child Care for Children Experiencing Homelessness as described in §809.52; or

(D) Parents who have children who are receiving protective services child care pursuant to §809.49 and §809.54(c), unless DFPS assesses the parent share of cost.

(3) Teen parents who are not covered under exemptions listed in paragraph (2) of this subsection shall be assessed a parent share of cost. The teen parent's share of cost is based solely on the teen parent's income and size of the teen's family as defined in §809.2.

(b) For child care services funded from sources other than those specified in subsection (a) of this section, a Board shall set a parent share of cost policy based on a sliding fee scale. The sliding fee scale may be the same as or different from the provisions contained in subsection (a) of this section.

(c) A Board shall establish a policy regarding reimbursement of providers when parents fail to pay the parent share of cost.

(d) The Board or its child care contractor may review the assessed parent share of cost for a possible temporary reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. The Board or its child care contractor may temporarily reduce the assessed parent share of cost if warranted by these circumstances. Following the temporary reduction, the parent share of cost amount immediately prior to the reduction shall be reinstated.

(e) If the parent is not covered by an exemption as specified in subsection (a)(2) of this section, then the Board or its child care contractor shall not waive the assessed parent share of cost under any circumstances.

(f) If the parent share of cost, based on family income and family size, is calculated to be zero, then the Board or its child care contractor shall not charge the parent a minimum share of cost amount.

(g) A Board may establish a policy to reduce the parent share of cost amount assessed pursuant to subsection (a)(1)(B) of this section upon the parent's selection of a TRS-certified provider. Such Board policy shall ensure:

(1) that the parent continue to receive the reduction if:

(A) the TRS provider loses TRS certification; or

(B) the parent moves or changes employment within the workforce area and no TRS-certified providers are available to meet the needs of the parent's changed circumstances; and

(2) that the parent no longer receives the reduction if the parent voluntarily transfers the child from a TRS-certified provider to a non-TRS-certified provider.

§809.20. Maximum Provider Reimbursement Rates.

(a) Based on local factors, including a market rate survey provided by the Commission, a Board shall establish maximum reimbursement rates for child care subsidies to ensure that the rates provide equal access to child care in the local market and in a manner consistent with state and federal statutes and regulations governing child care. At a minimum, Boards shall establish reimbursement rates for full-day and part-day units of service, as described in §809.93(f), for the following:

(1) Provider types:

(A) Licensed child care centers, including before- or after-school programs and school-age programs, as defined by DFPS;

(B) Licensed child care homes as defined by DFPS;

(C) Registered child care homes as defined by DFPS; and

(D) Relative child care providers as defined in §809.2.

(2) Age groups in each provider type:

(A) Infants age 0 to 17 months;

(B) Toddlers age 18 to 35 months;

(C) Preschool age children from 36 to 71 months; and

(D) School age children 72 months and over.

(b) A Board shall establish enhanced reimbursement rates:

(1) for all age groups at TRS provider facilities; and

(2) only for preschool-age children at child care providers that participate in integrated school readiness models pursuant to Texas Education Code §29.160.

(c) The minimum enhanced reimbursement rates established under subsection (b) of this section shall be greater than the maximum rate established for providers not meeting the requirements of subsection (b) of this section for the same category of care up to, but not to exceed, the provider's published rate. The maximum rate must be at least:

(1) 5 percent greater for a:

(A) 2-Star Program Provider; or

(B) child care provider meeting the requirements of subsection (b)(2) of this section;

(2) 7 percent greater for a 3-Star Program Provider; and

(3) 9 percent greater for a 4-Star Program Provider.

(d) Boards may establish a higher enhanced reimbursement rate than those specified in subsection (c) of this section for TRS providers, as long as there is a minimum 2 percentage point difference between each star level.

(e) A Board or its child care contractor shall ensure that providers that are reimbursed for additional staff or equipment needed to assist in the care of a child with disabilities are paid a rate up to 190 percent of the provider's reimbursement rate for a child of that same age. The higher rate shall take into consideration the estimated cost of the additional staff or equipment needed by a child with disabilities. The Board shall ensure that a professional, who is familiar with assessing the needs of children with disabilities, certifies the need for the higher reimbursement rate described in this subsection.

(f) The Board shall determine whether to reimburse providers that offer transportation as long as the combined total of the provider's published rate, plus the transportation rate, is subject to the maximum reimbursement rate established 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.

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Deputy Director, Workforce Development Division Programs
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SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

40 TAC §§809.41 - 809.54

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The adopted rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.41. A Child's General Eligibility for Child Care Services.

(a) Except for a child receiving or needing protective services as described in §809.49, for a child to be eligible to receive child care services, at the time of eligibility determination or redetermination, a Board shall ensure that the child:

(1) meets one of the following age requirements:

(A) be under 13 years of age; or

(B) at the option of the Board, be a child with disabilities under 19 years of age;

(2) is a U.S. citizen or legal immigrant as determined under applicable federal laws, regulations, and guidelines; and

(3) resides with:

(A) a family within the Board's workforce area:

(i) whose income does not exceed the income limit established by the Board, which income limit must not exceed 85 percent of the state median income (SMI) for a family of the same size; and

(ii) whose assets do not exceed $1,000,000 as certified by a family member; or

(iii) that meets the definition of experiencing homelessness as defined in §809.2.

(B) parents who require child care in order to work or attend a job training or educational program; or

(C) a person standing in loco parentis for the child while the child's parent is on military deployment and the deployed military parent's income does not exceed the limits set forth in subparagraph (A) of this paragraph.

(b) Notwithstanding the requirements set forth in subsection (c) of this section, a Board shall establish policies, including time limits, for the provision of child care services while the parent is attending an educational program.

(c) Time limits pursuant to subsection (b) of this section shall ensure the provision of child care services for four years, if the eligible child's parent is enrolled in an associate's degree program that will prepare the parent for a job in a high-growth, high-demand occupation as determined by the Board.

(d) A Board may establish a policy to allow parents attending a program that leads to a postsecondary degree from an institution of higher education to be exempt from residing with the child as defined in §809.2.

(e) Boards that establish initial family income eligibility at a level less than 85 percent of SMI must ensure that the family remains income-eligible for care after passing the Board's initial income eligibility limit.

(f) Unless otherwise specified, this subchapter applies only to child care services using funds allocated pursuant to §800.58 of this title, including local public transferred funds and local private donated funds described in §809.17.

§809.45. Choices Child Care.

(a) A parent is eligible for Choices child care if the parent is participating in the Choices program as stipulated in Chapter 811 of this title.

(b) For a parent receiving Choices child care who ceases participation in the Choices program during the 12-month eligibility period, Boards must ensure that Choices child care continues:

(1) for the three-month period pursuant to §809.51(b); and

(2) for the remainder of the eligibility period, if the parent resumes participation in Choices or begins participation in work or attendance in a job training or education program during the three-month period described in §809.51(c).

§809.47. Supplemental Nutrition Assistance Program Employment and Training Child Care.

(a) A parent is eligible to receive SNAP E&T child care services if the parent is participating in SNAP E&T services, in accordance with the provisions of 7 CFR Part 273.

(b) For a parent receiving SNAP E&T child care services who ceases participation in the E&T program during the 12-month eligibility period, Boards must ensure that SNAP E&T child care continues:

(1) for the three-month period pursuant to §809.51(b); and

(2) for the remainder of the eligibility period, if the parent resumes participation in the SNAP E&T program or begins participation in work or attendance in a job training or education program during the three-month period described in §809.51(c).

§809.50. At-Risk Child Care.

(a) A parent is eligible for child care services under this section if at initial eligibility determination and at eligibility redetermination as described in §809.42:

(1) the family income does not exceed the income limit established by the Board pursuant to §809.41(a)(3)(A); and

(2) child care is required for the parent to work or attend a job training or educational program for a combination of at least an average of 25 hours per week for a single-parent family or 50 hours per week for a two-parent family, or a higher number of hours per week as established by the Board.

(b) A Board may allow a reduction to the work, education, or job training activity requirements in subsection (a)(2) of this section if a parent's documented medical disability or need to care for a physically or mentally disabled family member prevents the parent from participating in these activities for the required hours per week.

(c) For purposes of meeting the education requirements stipulated in subsection (a)(2) of this section, the following shall apply:

(1) each credit hour of postsecondary education counts as three hours of education activity per week;

(2) each credit hour of a condensed postsecondary education course counts as six education activity hours per week; and

(3) teen parents attending high school or the equivalent shall be considered as meeting the education requirements in subsection (a)(2) of this section.

(d) When calculating income eligibility for a child with disabilities, a Board shall deduct the cost of the child's ongoing medical expenses from the family income.

(e) Boards may establish a higher income eligibility limit for teen parents than the eligibility limit established pursuant to §809.41(a)(3)(A) provided that the higher income limit does not exceed 85 percent of the state median income for a family of the same size.

(f) A teen parent's family income is based solely on the teen parent's income and size of the teen's family as defined in §809.2(9).

(g) Boards may establish a higher income eligibility limit for families with a child who is enrolled in Head Start, Early Head Start, or public pre-K provided that the higher income limit does not exceed 85 percent of the state median income for a family of the same size.

§809.51. Child Care during Interruptions in Work, Education, or Job Training.

(a) Except for a child experiencing homelessness, as described in §809.52, if the child met all of the applicable eligibility requirements for child care services in this subchapter on the date of the most recent eligibility determination or redetermination, the child shall be considered to be eligible and will receive services during the 12-month eligibility period described in §809.42, regardless of any:

(1) change in family income, if that family income does not exceed 85 percent of SMI for a family of the same size; or

(2) temporary change in the ongoing status of the child's parent as working or attending a job training or education program. A temporary change shall include, at a minimum, any:

(A) time-limited absence from work for an employed parent for periods of family leave (including parental leave) or sick leave;

(B) interruption in work for a seasonal worker who is not working between regular industry work seasons;

(C) student holiday or breaks within a semester, between the fall and spring semesters, or between the spring and fall semesters, for a parent participating in training or education;

(D) reduction in work, training, or education hours, as long as the parent is still working or attending a training or education program;

(E) other cessation of work or attendance in a training or education program that does not exceed three months;

(F) change in age, including turning 13 years old or a child with disabilities turning 19 years old during the eligibility period; and

(G) change in residency within the state.

(b) During the period of time between eligibility redeterminations, a Board shall discontinue child care services due to a parent's loss of work or cessation of attendance at a job training or educational program that does not constitute a temporary change in accordance with subsection (a)(2) of this section. However, Boards must ensure that care continues at the same level for a period of not less than three months after such loss of work or cessation of attendance at a job training or educational program.

(c) If a parent resumes work or attendance at a job training or education program at any level and at any time during the period described in subsection (b) of this section, then the Board shall ensure that:

(1) care will continue to the end of the 12-month eligibility period at the same or greater level, depending upon any increase in the activity hours of the parent;

(2) the parent share of cost will not be increased during the remainder of the 12-month eligibility period, including for parents who are exempt from the parent share of cost pursuant to §809.19; and

(3) the Board's child care contractor verifies only:

(A) that the family income does not exceed 85 percent of SMI; and

(B) the resumption of work or attendance at a job training or education program.

(d) The Board may suspend child care services during interruptions in the parent's work, job training, or education status only at the concurrence of the parent.

§809.54. Continuity of Care.

(a) Enrolled children, including children whose eligibility for Transitional child care has expired, shall receive child care through the end of the applicable eligibility periods described in §809.42.

(b) Except as provided by §809.75 relating to child care during appeal, nothing in this chapter shall be interpreted in a manner as to result in a child being removed from care.

(c) In closed DFPS CPS cases (DFPS cases) where child care is no longer funded by DFPS, child care shall continue through the end of the applicable eligibility periods described in §809.42 using funds allocated to the Board by the Commission.

(d) A Board shall ensure that no enrolled children of military parents in military deployment have a disruption of child care services or eligibility during military deployment, including parents in military deployment at the end of the 12-month eligibility redetermination period.

(e) A Board shall ensure that a child who is required by a court-ordered custody or visitation arrangement to leave a provider's care is permitted to continue receiving child care by the same provider, or another provider if agreed to by the parent in advance of the leave, upon return from the court-ordered custody or visitation arrangement.

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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Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
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40 TAC §809.55

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The adopted repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

40 TAC §§809.71 - 809.75

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The adopted rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.71. Parent Rights.

A Board shall ensure that the Board's child care contractor informs the parent in writing that the parent has the right to:

(1) choose the type of child care provider that best suits their needs and to be informed of all child care options available to them as included in the consumer education information described in §809.15;

(2) visit available child care providers before making their choice of a child care option;

(3) receive assistance in choosing initial or additional child care referrals including information about the Board's policies regarding transferring children from one provider to another;

(4) be informed of the Commission rules and Board policies related to providers charging parents the difference between the Board's reimbursement and the provider's published rate as described in §809.92(c) - (d);

(5) be represented when applying for child care services;

(6) be notified of their eligibility to receive child care services within 20 calendar days from the day the Board's child care contractor receives all necessary documentation required to initially determine eligibility for child care;

(7) receive child care services regardless of race, color, national origin, age, sex, disability, political beliefs, or religion;

(8) have the Board and the Board's child care contractor treat information used to determine eligibility for child care services as confidential;

(9) receive written notification at least 15 calendar days before termination of child care services;

(10) reject an offer of child care services or voluntarily withdraw their child from child care, unless the child is in protective services;

(11) be informed of the possible consequences of rejecting or ending the child care that is offered;

(12) be informed of the eligibility documentation and reporting requirements described in §809.72 and §809.73;

(13) be informed of the parent appeal rights described in §809.74; and

(14) be informed of required background and criminal history checks for relative child care providers through the listing process with DFPS, as described in §809.91(e), before the parent or guardian selects the relative child care provider.

§809.73. Parent Reporting Requirements.

(a) Boards shall ensure that during the 12-month eligibility period, parents are only required to report items that impact a family's eligibility or that enable the Board or Board contractor to contact the family or pay the provider.

(b) Pursuant to subsection (a) of this section, parents shall report to the child care contractor, within 14 calendar days of the occurrence, the following:

(1) Changes in family income or family size that would cause the family to exceed 85 percent of SMI for a family of the same size;

(2) Changes in work or attendance at a job training or educational program not considered to be temporary changes, as described in §809.51; and

(3) Any change in family residence, primary phone number, or e-mail (if available).

(c) Failure to report changes described in subsection (a) of this section may result in fact-finding for suspected fraud as described in Subchapter F of this chapter.

(d) A Board shall allow parents to report and the child care contractor shall take appropriate action regarding changes in:

(1) income and family size, which may result in a reduction in the parent share of cost pursuant to §809.19; and

(2) work, job training, or education program participation that may result in an increase in the level of child care services.

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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40 TAC §809.76, §809.77

The repeals are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The adopted repeals affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

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40 TAC §809.78

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The adopted rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.78. Attendance Standards and Reporting Requirements.

(a) A Board shall ensure that parents are notified of the following:

(1) Parents shall ensure that the eligible child attends on a regular basis consistent with the child's authorization for enrollment. Failure to meet monthly attendance standards described in paragraph (2) of this subsection may:

(A) result in suspension of care, at the concurrence of the parent; or

(B) be grounds for determining that a change in the parent's participation in work, job training, or an education program has occurred and care may be terminated pursuant to the requirements in §809.51(b).

(2) Meeting attendance standards for child care services consists of fewer than:

(A) five consecutive absences during the month;

(B) ten total absences during the month.

(3) If a child exceeds 65 total absences during the most recent eligibility period, then the child is not eligible for care at the next eligibility determination and shall not be eligible for care for 12 months from the end of the most recent eligibility period.

(4) Notwithstanding paragraph (3) of this subsection, child care providers may end a child's enrollment with the provider if the child does not meet the provider's established policy regarding attendance.

(5) Parents shall use the attendance card to report daily attendance and absences.

(6) Parents shall not designate anyone under age 16 as a secondary cardholder, unless the individual is a child's parent.

(7) Parents shall not designate the owner, assistant director, or director of the child care facility as a secondary cardholder.

(8) Parents shall:

(A) ensure the attendance card is not misused by secondary cardholders;

(B) inform secondary cardholders of the responsibilities for using the attendance card;

(C) ensure that secondary cardholders comply with these responsibilities; and

(D) ensure the protection of attendance cards issued to them or secondary cardholders.

(9) The parent or secondary cardholders giving the attendance card or the personal identification number (PIN) to another person, including the child care provider, is grounds for a potential fraud determination pursuant to Subchapter F of this chapter.

(10) Parents shall report to the child care contractor instances in which a parent's attempt to record attendance in the child care automated attendance system is denied or rejected and cannot be corrected at the provider site. Failure to report such instances may result in an absence counted toward the attendance standards described in paragraphs (2) and (3) of this subsection.

(b) Boards shall ensure that parents sign a written acknowledgment indicating their understanding of the attendance standards and reporting requirements at each of the following stages:

(1) initial eligibility determination; and

(2) each eligibility redetermination, as required in §809.42(b).

(c) Boards shall ensure that absences due to a child's documented chronic illness or disability or court-ordered visitation are not counted in the number of absences in subsection (a)(2) and (3) of this section.

(d) Where a child's enrollment has been ended by a provider in subsection (a)(4) of this section, Boards shall work with the parent to place the otherwise eligible child with another eligible provider.

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SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

40 TAC §§809.91 - 809.95

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The adopted rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.91. Minimum Requirements for Providers.

(a) A Board shall ensure that child care subsidies are paid only to:

(1) regulated child care providers as described in §809.2;

(2) relative child care providers as described in §809.2, subject to the requirements in subsection (e) of this section; or

(3) at the Board's option, child care providers licensed in a neighboring state, subject to the following requirements:

(A) Boards shall ensure that the Board's child care contractor reviews the licensing status of the out-of-state provider every month, at a minimum, to confirm the provider is meeting the minimum licensing standards of the state;

(B) Boards shall ensure that the out-of-state provider meets the requirements of the neighboring state to serve CCDF-subsidized children; and

(C) The provider shall agree to comply with the requirements of this chapter and all Board policies and Board child care contractor procedures.

(b) A Board shall not prohibit a relative child care provider who is listed with DFPS and who meets the minimum requirements of this section from being an eligible relative child care provider.

(c) Except as provided by the criteria for TRS Provider certification, a Board or the Board's child care contractor shall not place requirements on regulated providers that:

(1) exceed the state licensing requirements stipulated in Texas Human Resources Code, Chapter 42; or

(2) have the effect of monitoring the provider for compliance with state licensing requirements stipulated in Texas Human Resources Code, Chapter 42.

(d) When a Board or the Board's child care contractor, in the course of fulfilling its responsibilities, gains knowledge of any pos-

sible violation regarding regulatory standards, the Board or its child care contractor shall report the information to the appropriate regulatory agency.

(e) For relative child care providers to be eligible for reimbursement for Commission-funded child care services, the following applies:

(1) Relative child care providers shall list with DFPS; however, pursuant to 45 CFR §98.41(e), relative child care providers listed with DFPS shall be exempt from the health and safety requirements of 45 CFR §98.41(a).

(2) A Board shall allow relative child care providers to care for a child in the child's home (in-home child care) only for the following:

(A) A child with disabilities as defined in §809.2, and his or her siblings;

(B) A child under 18 months of age, and his or her siblings;

(C) A child of a teen parent; and

(D) When the parent's work schedule requires evening, overnight, or weekend child care in which taking the child outside of the child's home would be disruptive to the child.

(3) A Board may allow relative in-home child care for circumstances in which the Board's child care contractor determines and documents that other child care provider arrangements are not available in the community.

(f) Boards shall ensure that subsidies are not paid for a child at the following child care providers:

(1) Except for foster parents authorized by DFPS pursuant to §809.49, licensed child care centers, including before- or after-school programs and school-age programs, in which the parent or his or her spouse, including the child's parent or stepparent, is the director or assistant director, or has an ownership interest; or

(2) Licensed, registered, or listed child care homes where the parent also works during the hours his or her child is in care.

§809.92. Provider Responsibilities and Reporting Requirements.

(a) A Board shall ensure that providers are given written notice of and agree to their responsibilities, reporting requirements, and requirements for reimbursement under this subchapter prior to enrolling a child.

(b) Providers shall:

(1) be responsible for collecting the parent share of cost as assessed under §809.19 before child care services are delivered;

(2) be responsible for collecting other child care funds received by the parent as described in §809.21(a)(2);

(3) report to the Board or the Board's child care contractor instances in which the parent fails to pay the parent share of cost; and

(4) follow attendance reporting and tracking procedures required by the Commission under §809.95, the Board, or, if applicable, the Board's child care contractor.

(c) Providers shall not charge the difference between the provider's published rate and the amount of the Board's reimbursement rate as determined under §809.21 to parents:

(1) who are exempt from the parent share of cost assessment under §809.19(a)(2); or

(2) whose parent share of cost is calculated to be zero pursuant to §809.19(f).

(d) A Board may develop a policy that prohibits providers from charging the difference between the provider's published rate and the amount of the Board's reimbursement rate (including the assessed parent share of cost) to all parents eligible for child care services.

(e) Providers shall not deny a child care referral based on the parent's income status, receipt of public assistance, or the child's protective service status.

(f) Providers shall not charge fees to a parent receiving child care subsidies that are not charged to a parent who is not receiving subsidies.

§809.93. Provider Reimbursement.

(a) A Board shall ensure that reimbursement for child care is paid only to the provider.

(b) A Board or its child care contractor shall reimburse a regulated provider based on a child's monthly enrollment authorization, excluding periods of suspension at the concurrence of the parent as described in §809.51(d) and §809.78(a).

(c)) A Board shall ensure that a relative child care provider is not reimbursed for days on which the child is absent.

(d) A relative child care provider shall not be reimbursed for more children than permitted by the DFPS minimum regulatory standards for Registered Child Care Homes. A Board may permit more children to be cared for by a relative child care provider on a case-by-case basis as determined by the Board.

(e) A Board shall not reimburse providers that are debarred from other state or federal programs unless and until the debarment is removed.

(f) Unless otherwise determined by the Board and approved by the Commission for automated reporting purposes, the monthly enrollment authorization described in subsection (b) of this section is based on the unit of service authorized, as follows:

(1) A full-day unit of service is 6 to 12 hours of care provided within a 24-hour period; and

(2) A part-day unit of service is fewer than 6 hours of care provided within a 24-hour period.

(g) A Board or its child care contractor shall ensure that providers are not paid for holding spaces open.

(h) A Board or the Board's child care contractor shall not pay providers:

(1) less, when a child enrolled full time occasionally attends for a part day; or

(2) more, when a child enrolled part time occasionally attends for a full day.

(i) The Board or its child care contractor shall not reimburse a provider retroactively for new Board maximum reimbursement rates or new provider published rates.

(j) A Board or its child care contractor shall ensure that the parent's travel time to and from the child care facility and the parent's work, school, or job training site is included in determining whether to authorize reimbursement for full-day or part-day care under subsection (f) of this section.

§809.94. Providers Placed on Corrective or Adverse Action by the Texas Department of Family and Protective Services.

(a) For a provider placed on evaluation corrective action (evaluation status) by DFPS, Boards shall ensure that:

(1) parents with children enrolled in Commission-funded child care are notified in writing of the provider's evaluation status no later than five business days after receiving notification from the Agency of DFPS' decision to place the provider on evaluation status; and

(2) parents choosing to enroll children in Commission-funded child care with the provider are notified in writing of the provider's evaluation status prior to enrolling the children with the provider.

(b) For a provider placed on probation corrective action (probationary status) by DFPS, Boards shall ensure that:

(1) parents with children in Commission-funded child care are notified in writing of the provider's probationary status no later than five business days after receiving notification from the Agency of DFPS' decision to place the provider on probationary status; and

(2) no new referrals are made to the provider while on probationary status.

(c) A parent receiving notification of a provider's evaluation or probationary status with DFPS pursuant to subsections (a) and (b) of this section may transfer the child to another eligible provider without being subject to the Board transfer policies described in §809.71(3) if the parent requests the transfer within 14 calendar days of receiving such notification.

(d) For a provider placed on evaluation or probationary status by DFPS, Boards shall ensure that the provider is not reimbursed at the Boards' enhanced reimbursement rates described in §809.20 while on evaluation or probationary status.

(e) For a provider against whom DFPS is taking adverse action, Boards shall ensure that:

(1) parents with children enrolled in Commission-funded child care are notified no later than two business days after receiving notification from the Agency that DFPS intends to take adverse action against the provider;

(2) children enrolled in Commission-funded child care with the provider are transferred to another eligible provider no later than five business days after receiving notification from the Agency that DFPS intends to take adverse action against the provider; and

(3) no new referrals for Commission-funded child care are made to the provider while DFPS is taking adverse action.

(f) For adverse actions in which DFPS has determined that the provider poses an immediate risk to the health or safety of children and cannot operate pending appeal of the adverse action, but for which there is a valid court order that overturns DFPS' determination and allows the provider to operate pending administrative review or appeal, Boards shall take action consistent with subsection (e) 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.

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SUBCHAPTER F. FRAUD FACT-FINDING AND IMPROPER PAYMENTS

40 TAC §§809.111 - 809.113, 809.115

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The adopted rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.111. General Fraud Fact-Finding Procedures.

(a) This subchapter establishes authority for a Board to develop procedures for the prevention of fraud by a parent, provider, or any other person in a position to commit fraud consistent with fraud prevention provisions in the Agency-Board Agreement.

(b) In this subchapter, a person commits fraud if, to obtain or increase a benefit or other payment, either for the person or another person, the person:

(1) makes a false statement or representation, knowing it to be false; or

(2) knowingly fails to disclose a material fact.

(c) A Board shall ensure that procedures for researching and fact-finding for possible fraud are developed and implemented to deter and detect suspected fraud for child care services in the workforce area.

(d) These procedures shall include provisions that suspected fraud is reported to the Commission in accordance with Commission policies and procedures.

(e) Upon review of suspected fraud reports, the Commission may either accept the case for investigation and action at the state level, or return the case to the Board or its child care contractor for action including, but not limited to, the following:

(1) further fact-finding; or

(2) other corrective action as provided in this chapter or as may be appropriate.

(f) The Board shall ensure that a final fact-finding report is submitted to the Commission after a case is returned to the Board or its child care contractor and all feasible avenues of fact-finding and corrective actions have been exhausted.

§809.112. Suspected Fraud.

(a) A parent, provider, or any other person in a position to commit fraud may be suspected of fraud if the person presents or causes to be presented to the Board or its child care contractor one or more of the following items:

(1) A request for reimbursement in excess of the amount charged by the provider for the child care; or

(2) A claim for child care services if evidence indicates that the person may have:

(A) known, or should have known, that child care services were not provided as claimed;

(B) known, or should have known, that information provided is false or fraudulent;

(C) received child care services during a period in which the parent or child was not eligible for services;

(D) known, or should have known, that child care subsidies were provided to a person not eligible to be a provider; or

(E) otherwise indicated that the person knew or should have known that the actions were in violation of this chapter or state or federal statute or regulations relating to child care services.

(b) The following parental actions may be grounds for suspected fraud and cause for Boards to conduct fraud fact-finding or the Commission to initiate a fraud investigation:

(1) Not reporting or falsely reporting at initial eligibility or at eligibility redetermination:

(A) household composition, or income sources or amounts that would have resulted in ineligibility or a higher parent share of cost; or

(B) work, training, or education hours that would have resulted in ineligibility; or

(2) Not reporting during the 12-month eligibility period:

(A) changes in income or household composition that would cause the family income to exceed 85 percent of SMI (taking into consideration fluctuations of income); or

(B) a permanent loss of job or cessation of training or education that exceeds three months; or

(C) improper or inaccurate reporting of attendance.

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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40 TAC §809.116

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The adopted repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

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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40 TAC §809.117

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The adopted rule affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.117. Recovery of Improper Payments to a Provider or Parent.

(a) A Board shall attempt recovery of all improper payments as defined in §809.2.

(b) Recovery of improper payments shall be managed in accordance with Commission policies and procedures.

(c) The provider shall repay improper payments for child care services received in the following circumstances:

(1) Instances involving fraud;

(2) Instances in which the provider did not meet the provider eligibility requirements in this chapter;

(3) Instances in which the provider was paid for the child care services from another source;

(4) Instances in which the provider did not deliver the child care services;

(5) Instances in which referred children have been moved from one facility to another without authorization from the child care contractor; and

(6) Other instances when repayment is deemed an appropriate action.

(d) A parent shall repay improper payments for child care only in the following circumstances:

(1) Instances involving fraud as defined in this subchapter;

(2) Instances in which the parent has received child care services while awaiting an appeal and the determination is affirmed by the hearing officer; or

(3) Instances in which the parent fails to pay the parent share of cost and the Board's policy is to pay the provider for the parent's failure to pay the parent share of cost.

(e) A Board shall ensure that a parent subject to the repayment provisions in subsection (d) of this section shall prohibit future child care eligibility until the repayment amount is recovered, provided that the prohibition does not result in a Choices or SNAP E&T participant becoming ineligible for child care.

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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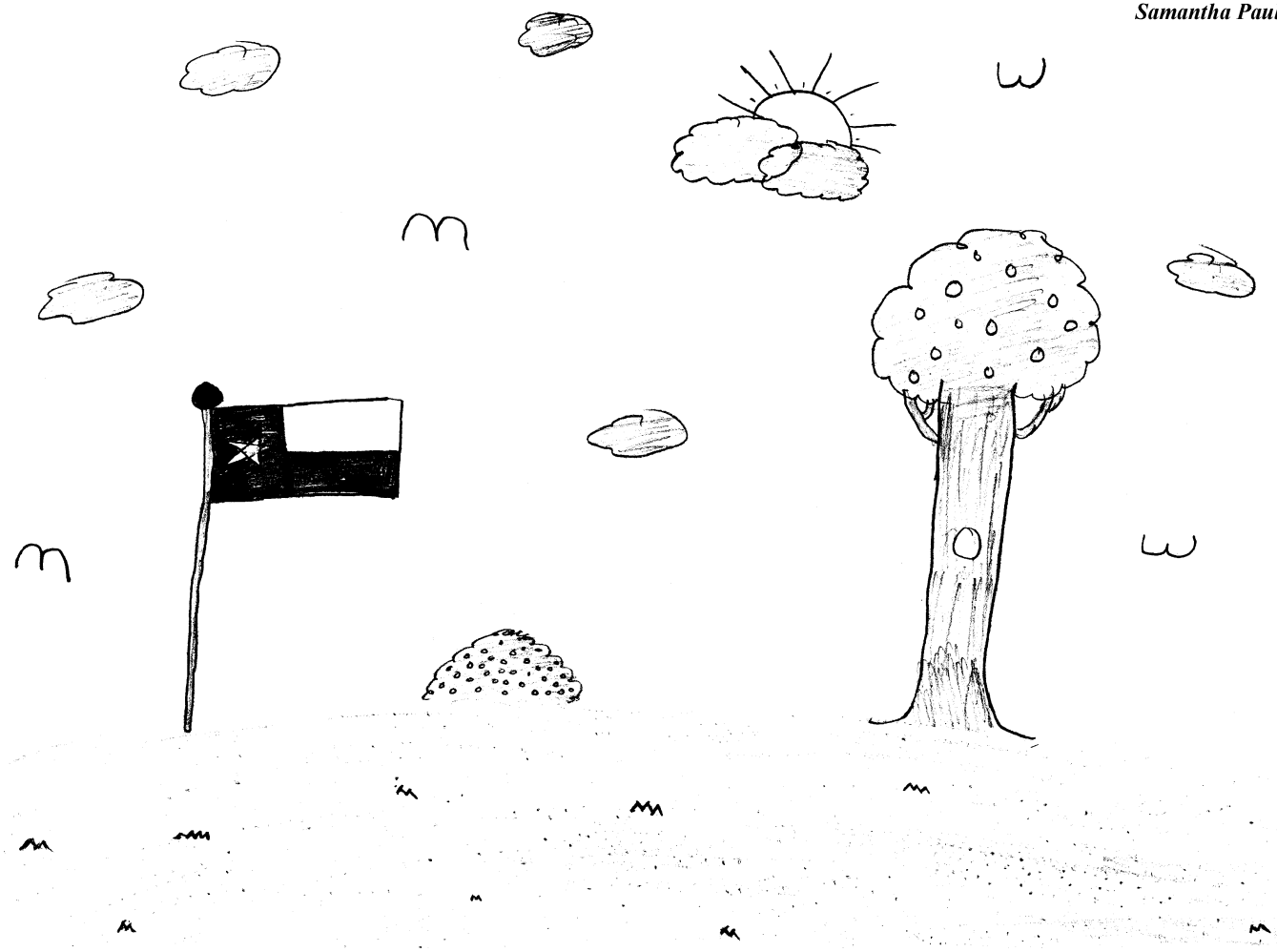


TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

Texas Department of Licensing and Regulation

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 202 (SB 202), which in part, transferred 13 occupational licensing programs in two phases from the Department of State Health Services (DSHS) to the Texas Commission of Licensing and Regulation and the Texas Department of Licensing and Regulation (Department). Under Phase I, the following seven programs are being transferred from DSHS to the Commission and the Department: (I) Midwives, Texas Occupations Code, Chapter 203; (2) Speech-Language Pathologists and Audiologists, Texas Occupations Code, Chapter 401; (3) Hearing Instrument Fitters and Dispensers, Texas Occupations Code , Chapter 402; (4) Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists, Texas Occupations Code, Chapter 403; (5) Athletic Trainers, Texas Occupations Code, Chapter 451; (6) Orthotists and Prosthetists, Texas Occupations Code, Chapter 605; and (7) Dietitians, Texas Occupations Code, Chapter 701. The statutory amendments transferring regulation of these seven Phase I programs from DSHS to the Commission and the Department took effect on September 1, 2015.

To comply with SB 202, the Department has adopted rules to regulate the respective Phase I programs; however, the Department will need to repeal the existing DSHS rules to eliminate any confusion within the respective industries. To accomplish the repeal, the following DSHS rules will be transferred effective October 1, 2016.

Title 22, Chapter 821 to Title 16, Chapter 140

Title 22, Chapter 711 to Title 16, Chapter 141

Title 22, Chapter 871 to Title 16, Chapter 142

Title 22, Chapter 83 I to Title 16, Chapter 143

Title 22, Chapter 141 to Title 16, Chapter 144

Title 22, Chapter 741 to Title 16, Chapter 145

Title 25, Chapter 140 (Subchapter K only) to Title 16, Chapter 146

Figure: Title 16, Chapter 140

Current Rules from Title 22, Part 37 Texas Board of Orthotics and Prosthetics Chapter 821. Orthotics and Prosthetics	**Transferred to Title 16, Part 4 Texas Department of Licensing and Regulation Chapter 140. Orthotics and Prosthetics**
§821.1 Introduction	§140.1 Introduction
§821.2 Definitions	§140.2. Definitions
§821.3 Operation of the Board	§140.3 Operation of the Board
§821.4 Fees	§140.4 Fees
§821.5 General Application Procedures	§140.5 General Application Procedures
§821.6 General Licensing Procedures	§140.6 General Licensing Procedures
§821.7 Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist	§140.7 Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist
§821.8 Acquiring Professional Licensure as a Uniquely Qualified Person	§140.8 Acquiring Professional Licensure as a Uniquely Qualified Person
§821.9 Licensing by Examination	§140.9 Licensing by Examination
§821.10 Assistant License	§140.10 Assistant License
§821.11 Technician Registration	§140.11 Technician Registration
§821.12 Temporary License	§140.12 Temporary License
§821.13 Student Registration	§140.13 Student Registration
§821.14 Upgrading a Student Registration	§140.14 Upgrading a Student Registration
§821.15 Accreditation of Prosthetic and Orthotic Facilities	§140.15 Accreditation of Prosthetic and Orthotic Facilities
§821.16 Standards, Guidelines, and Procedures for a Professional Clinical Residency	§140.16 Standards, Guidelines, and Procedures for a Professional Clinical Residency
§821.17 License Renewal	§140.17 License Renewal
§821.18 Continuing Education	§140.18 Continuing Education
§821.19 Change of Name and Address	§140.19 Change of Name and Address
§821.20 Complaints	§140.20 Complaints
§821.21 Professional Standard and Disciplinary Provisions	§140.21 Professional Standard and Disciplinary Provisions
§821.22 Licensing Persons with Criminal Backgrounds	§140.22 Licensing Persons with Criminal Backgrounds
§821.23 Default Orders	§140.23 Default Orders
§821.24 Surrender of License	§140.24 Surrender of License
§821.25 Suspension of License under the Family Code	§140.25 Suspension of License under the Family Code
§821.26 Civil Penalty	§140.26 Civil Penalty
§821.27 Program Accessibility	§140.27 Program Accessibility
§821.28 Consumer Notification	§140.28 Consumer Notification
§821.29 Petition for the Adoption of a Rule	§140.29 Petition for the Adoption of a Rule
§821.30 Criminal History Evaluation Letter	§140.30 Criminal History Evaluation Letter
§821.31 Licensing of Military Service Members, Military Veterans, and Military Spouses	§140.31 Licensing of Military Service Members, Military Veterans, and Military Spouses

Figure: Title 16, Chapter 141

Current Rules from Title 22, Part 31 Texas State Board of Examiners of Dietitians Chapter 711. Dietitians	**Transferred to Title 16, Part 4 Texas Department of Licensing and Regulation Chapter 141. Licensed Dietitians**
Subchapter A. Licensed Dietitians	**Subchapter A Licensed Dietitians**
§711.1 Definitions	§141.1 Definitions
§711.2 The Board's Operation	§141.2 The Board's Operation
§711.3 Fees	§141.3 Fees
§711.4 The Profession of Dietetics and Code of Ethics	§141.4 The Profession of Dietetics and Code of Ethics
§711.5 Academic Requirements for Licensure	§141.5 Academic Requirements for Licensure
§711.6 Preplanned Professional Experience Requirements for Licensure	§141.6 Preplanned Professional Experience Requirements for Licensure
§711.7 Examination for Dietitian Licensure	§141.7 Examination for Dietitian Licensure
§711.8 Application Procedures	§141.8 Application Procedures
§711.9 Determination of Eligibility for Licensure	§141.9 Determination of Eligibility for Licensure
§711.10 Provisional Licensed Dietitians	§141.10 Provisional Licensed Dietitians
§711.11 Qualifications of Licensed Dietitians to Provide Diabetes Self-Management Training	§141.11 Qualifications of Licensed Dietitians to Provide Diabetes Self-Management Training
§711.12 Licensing	§141.12 Licensing
§711.13 Temporary License	§141.13 Temporary License
§711.14 Changes of Name or Address	§141.14 Changes of Name or Address
§711.15 License Renewal	§141.15 License Renewal
§711.16 Continuing Education Requirements	§141.16 Continuing Education Requirements
§711.17 Licensing of Persons with Criminal Convictions	§141.17 Licensing of Persons with Criminal Convictions
§711.18 Violations, Complaints and Subsequent Board Actions	§141.18 Violations, Complaints and Subsequent Board Actions
§711.19 Formal Hearings	§141.19 Formal Hearings
§711.20 Informal Disposition	§141.20 Informal Disposition
§711.21 Default Orders	§141.21 Default Orders
§711.22 License Suspension or Denial Relating to Child Support and Child Custody	§141.22 License Suspension or Denial Relating to Child Support and Child Custody

Figure: Title 16, Chapter 142

Current Rules from Title 22, Part 40 Advisory Board of Athletic Trainers Chapter 871. Athletic Trainers	**Transferred to Title 16, Part 4 Texas Department of Licensing and Regulation Chapter 142. Athletic Trainers**
Subchapter A. General Guidelines and Requirements	**Subchapter A. General Guidelines and Requirements**
§871.1 Definitions	§142.1 Definitions
§871.2 Scope of Practice	§142.2 Scope of Practice
§871.3 The Board's Operation	§142.3 The Board's Operation
§871.4 Petition for Rulemaking	§142.4 Petition for Rulemaking
§871.5 Processing Applications	§142.5 Processing Applications
§871.6 Fees	§142.6 Fees
§871.7 Qualifications	§142.7 Qualifications
§871.8 Student Athletic Trainer Activities	§142.8 Student Athletic Trainer Activities
§871.9 Examination for Licensure	§142.9 Examination for Licensure
§871.10 Temporary License	§142.10 Temporary License
§871.11 License Renewal	§142.11 License Renewal
§871.12 Continuing Education Requirements	§142.12 Continuing Education Requirements
§871.13 Standards for Conduct	§142.13 Standards for Conduct
§871.14 Violations, Complaints and Disciplinary Actions	§142.14 Violations, Complaints and Disciplinary Actions
§871.15 Licensing of Persons with Criminal Backgrounds to be Athletic Trainers	§142.15 Licensing of Persons with Criminal Backgrounds to be Athletic Trainers
§871.16 Formal Hearings	§142.16 Formal Hearings
§871.17 Suspension of License Relating to Child Support and Child Custody	§142.17 Suspension of License Relating to Child Support and Child Custody
§871.18 Administrative Penalties	§142.18 Administrative Penalties
§871.19 Request for Criminal History Evaluation Letter	§142.19 Request for Criminal History Evaluation Letter
§871.20 Licensing of Military Service Members, Military Veterans, and Military Spouses	§142.20 Licensing of Military Service Members, Military Veterans, and Military Spouses

Figure: Title 16, Chapter 143

Current Rules from Title 22, Part 38 Texas Midwifery Board Chapter 831. Midwifery	**Transferred to Title 16, Part 4 Texas Department of Licensing and Regulation Chapter 143. Midwifery**
Subchapter A. The Board	**Subchapter A. The Board**
§831.1 Introduction	§143.1 Introduction
§831.2 Definitions	§143.2 Definitions
§831.3 Midwifery Board	§143.3 Midwifery Board
§831.4 Board Member Training	§143.4 Board Member Training
§831.7 Petition for the Adoption of a Rule	§143.7 Petition for the Adoption of a Rule
Subchapter B. Licensure	**Subchapter B. Licensure**
§831.11 License Required	§143.11 License Required
§831.12 Fees	§143.12 Fees
§831.13 Initial Application for Licensure	§143.13 Initial Application for Licensure
§831.14 License Renewal	§143.14 License Renewal
§831.15 Late Renewal	§143.15 Late Renewal
§831.16 Renewal for Retired Midwives Performing Charity Work	§143.16 Renewal for Retired Midwives Performing Charity Work
§831.17 State Roster of Licensed Midwives	§143.17 State Roster of Licensed Midwives
§831.20 Grounds for Denial of Application or Disciplinary Action	§143.20 Grounds for Denial of Application or Disciplinary Action
§831.21 Application or Renewal with Criminal Conviction	§143.21 Application or Renewal with Criminal Conviction
§831.22 License Surrender	§143.22 License Surrender
§831.23 Application for a New License after Revocation, Suspension, or Surrender	§143.23 Application for a New License after Revocation, Suspension, or Surrender
§831.24 Request for a Criminal History Evaluation Letter	§143.24 Request for a Criminal History Evaluation Letter
§831.25 Licensing of Military Service Members, Military Veterans, and Military Spouses	§143.25 Licensing of Military Service Members, Military Veterans, and Military Spouses
Subchapter C. Education and Examination	**Subchapter C. Education and Examination**
§831.31 Education Committee	§143.31 Education Committee
§831.32 Basic Midwifery Education	§143.32 Basic Midwifery Education
§831.33 Education Course Approval	§143.33 Education Course Approval
§831.34 Education Course Denial or Revocation of Approval	§143.34 Education Course Denial or Revocation of Approval
§831.35 Exam Approval, Denial, or Revocation of Approval	§143.35 Exam Approval, Denial, or Revocation of Approval
§831.36 Complaints Concerning Education Courses and Comprehensive Exams	§143.36 Complaints Concerning Education Courses and Comprehensive Exams
§831.37 Jurisprudence Examination	§143.37 Jurisprudence Examination
§831.40 Continuing Education	§143.40 Continuing Education
Subchapter D. Practice of Midwifery	**Subchapter D. Practice of Midwifery**
§831.51 Standards for the Practice of Midwifery in Texas	§143.51 Standards for the Practice of Midwifery in Texas
§831.52 Inter-professional Care	§143.52 Inter-professional Care
§831.57 Termination of the Midwife-Client Relationship	§143.57 Termination of the Midwife-Client Relationship
§831.58 Transfer of Care in An Emergency Situation	§143.58 Transfer of Care in An Emergency Situation
§831.60 Prenatal Care	§143.60 Prenatal Care
§831.65 Labor and Delivery	§143.65 Labor and Delivery

§831.70 Postpartum Care	§143.70 Postpartum Care
§831.75 Newborn Care During the First Six Weeks After Birth	§143.75 Newborn Care During the First Six Weeks After Birth
§831.101 Administration of Oxygen	§143.101 Administration of Oxygen
§831.111 Eye Prophylaxis	§143.111 Eye Prophylaxis
§831.121 Newborn Screening	§143.121 Newborn Screening
§831.131 Informed Choice and Disclosure Statement	§143.131 Informed Choice and Disclosure Statement
§831.141 Provision of Support Services	§143.141 Provision of Support Services
Subchapter E. Complaint Review	**Subchapter E. Complaint Review**
§831.161 Complaint Review Committee	§143.161 Complaint Review Committee
§831.162 Reporting Violations and/or Complaints	§143.162 Reporting Violations and/or Complaints
§831.163 Records of Complaints	§143.163 Records of Complaints
§831.164 Complaint Categories	§143.164 Complaint Categories
§831.165 Disciplinary Action and Guidelines	§143.165 Disciplinary Action and Guidelines
§831.166 Complaint Investigation	§143.166 Complaint Investigation
§831.167 Informal Settlement Conferences	§143.167 Informal Settlement Conferences
§831.168 Formal Hearings	§143.168 Formal Hearings
§831.169 Disciplinary Action	§143.169 Disciplinary Action
§831.170 Complaint Disposition and Appeals	§143.170 Complaint Disposition and Appeals
§831.171 Refunds	§143.171 Refunds
§831.172 Cease and Desist Order	§143.172 Cease and Desist Order
§831.173 Emergency Suspension	§143.173 Emergency Suspension
§831.174 Default Orders	§143.174 Default Orders

Figure: Title 16, Chapter 144

Current Rules from Title 22, Part 7 State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments Chapter 141. Fitting and Dispensing of Hearing Instruments	**Transferred to Title 16, Part 4 Texas Department of Licensing and Regulation Chapter 144. Fitting and Dispensing of Hearing Instruments**
§141.1 Purpose	§144.1 Purpose
§141.2 Definitions	§144.2 Definitions
§141.3 The Committee	§144.3 The Committee
§141.4 Licensees and the Committee	§144.4 Licensees and the Committee
§141.5 Consumer Information and Display of License	§144.5 Consumer Information and Display of License
§141.6 Application Procedures	§144.6 Application Procedures
§141.7 Processing Procedures	§144.7 Processing Procedures
§141.8 Issuance of Permits	§144.8 Issuance of Permits
§141.9 Issuance of Licenses	§144.9 Issuance of Licenses
§141.10 Application By License Holder From Another State	§144.10 Application By License Holder From Another State
§141.11 Filing of Bond	§144.11 Filing of Bond
§141.12 Surrender of a License or Permit	§144.12 Surrender of a License or Permit
§141.13 Renewal of License	§144.13 Renewal of License
§141.14 Continuing Education Requirements	§144.14 Continuing Education Requirements
§141.15 Examination	§144.15 Examination
§141.16 Conditions of Sales	§144.16 Conditions of Sales
§141.17 Complaints and Violations	§144.17 Complaints and Violations
§141.18 Formal Hearings	§144.18 Formal Hearings
§141.19 Administrative Penalties	§144.19 Administrative Penalties
§141.20 Informal Disposition	§144.20 Informal Disposition
§141.21 Suspension of License Relating to Child Support and Child Custody Orders	§144.21 Suspension of License Relating to Child Support and Child Custody Orders
§141.22 Code of Ethics	§144.22 Code of Ethics
§141.23 Relevant Factors	§144.23 Relevant Factors
§141.24 Severity Level and Sanction Guide	§144.24 Severity Level and Sanction Guide
§141.25 Request for Criminal History Evaluation Letter	§144.25 Request for Criminal History Evaluation Letter
§141.26 Criminal History Record Information Requirement for License or Permit Issuance	§144.26 Criminal History Record Information Requirement for License or Permit Issuance
§141.27 Criminal History Record Information Requirement for License Renewal	§144.27 Criminal History Record Information Requirement for License Renewal
§141.28 Licensing of Military Service Members, Military Veterans, and Military Spouses	§144.28 Licensing of Military Service Members, Military Veterans, and Military Spouses
§141.29 Joint Rule Regarding the Sale of Hearing Instruments	§144.29 Joint Rule Regarding the Sale of Hearing Instruments
§141.30 Joint Rule Regarding the Fitting and Dispensing of Hearing Instruments by Telepractice	§144.30 Joint Rule Regarding the Fitting and Dispensing of Hearing Instruments by Telepractice
§141.31 Petition for Adoption of a Rule	§144.31 Petition for Adoption of a Rule

Figure: Title 16, Chapter 145

Current Rules From Title 22, Part 32 State Board of Examiners for Speech-Language Pathology and Audiology Chapter 741. Speech-Language Pathologists and Audiologists	**Transferred to Title 16, Part 4 Texas Department of Licensing and Regulation Chapter 145. Speech-Language Pathologists and Audiologists**
Subchapter A. Definitions	**Subchapter A. Definitions**
§741.1 Definitions	§145.1 Definitions
Subchapter B. The Board	**Subchapter B. The Board**
§741.11 Officers	§145.11 Officers
§741.12 Committees	§145.12 Committees
§741.13 Transaction of Official Business	§145.13 Transaction of Official Business
§741.14 Petition for Adoption of a Rule	§145.14 Petition for Adoption of a Rule
§741.15 Impartiality and Nondiscrimination	§145.15 Impartiality and Nondiscrimination
Subchapter C. Screening Procedures	**Subchapter C. Screening Procedures**
§741.31 Communication Screening	§145.31 Communication Screening
§741.32 Hearing Screening	§145.32 Hearing Screening
§741.33 Newborn Hearing Screening	§145.33 Newborn Hearing Screening
Subchapter D. Code of Ethics; Duties and Responsibilities of Supervisors	**Subchapter D. Code of Ethics; Duties and Responsibilities of Supervisors**
§741.41 Professional Responsibilities of License Holders	§145.41 Professional Responsibilities of License Holders
§741.42 Advertising	§145.42 Advertising
§741.43 Recordkeeping and Billing	§145.43 Recordkeeping and Billing
§741.44 Requirements, Duties, and Responsibilities of Supervisors	§145.44 Requirements, Duties, and Responsibilities of Supervisors
§741.45 Consumer Information and Display of License	§145.45 Consumer Information and Display of License
Subchapter E. Requirements for Licensure of Speech-Language Pathologists	**Subchapter E. Requirements for Licensure of Speech-Language Pathologists**
§741.61 Requirements for a Speech-Language Pathology License	§145.61 Requirements for a Speech-Language Pathology License
§741.62 Requirements for an Intern in Speech-Language Pathology License	§145.62 Requirements for an Intern in Speech-Language Pathology License
§741.63 Waiver of Clinical and Examination Requirements for Speech-Language Pathologists	§145.63 Waiver of Clinical and Examination Requirements for Speech-Language Pathologists
§741.64 Requirements for an Assistant in Speech-Language Pathology License	§145.64 Requirements for an Assistant in Speech-Language Pathology License
§741.65 Requirements for a Temporary Certificate of Registration in Speech-Language Pathology	§145.65 Requirements for a Temporary Certificate of Registration in Speech-Language Pathology
§741.66 Licensing in Speech-Language Pathology for Military Service Members, Military Veterans, and Military Spouses	§145.66 Licensing in Speech-Language Pathology for Military Service Members, Military Veterans, and Military Spouses
Subchapter F. Requirements for Licensure of Audiologists	**Subchapter F. Requirements for Licensure of Audiologists**
§741.81 Requirements for an Audiology License	§145.81 Requirements for an Audiology License
§741.82 Requirements for an Intern in Audiology License	§145.82 Requirements for an Intern in Audiology License
§741.83 Waiver of Clinical and Examination Requirements for Audiologists	§145.83 Waiver of Clinical and Examination Requirements for Audiologists
§741.84 Requirements for an Assistant in Audiology License	§145.84 Requirements for an Assistant in Audiology License

§741.85 Requirements for a Temporary Certificate of Registration in Audiology	§145.85 Requirements for a Temporary Certificate of Registration in Audiology
§741.86 Licensing in Audiology for Military Service Members, Military Veterans, and Military Spouses	§145.86 Licensing in Audiology for Military Service Members, Military Veterans, and Military Spouses
Subchapter G. Requirements for Dual Licensure as a Speech-Language Pathologist and an Audiologist	**Subchapter G. Requirements for Dual Licensure as a Speech-Language Pathologist and an Audiologist**
§741.91 Requirements for Dual Licenses in Speech-Language Pathology and Audiology	§145.91 Requirements for Dual Licenses in Speech-Language Pathology and Audiology
Subchapter H. Fitting and Dispensing of Hearing Instruments	**Subchapter H. Fitting and Dispensing of Hearing Instruments**
§741.101 Registration of Audiologists and Interns in Audiology to Fit and Dispense Instruments	§145.101 Registration of Audiologists and Interns in Audiology to Fit and Dispense Instruments
§741.102 General Practice Requirements of Audiologists and Interns in Audiology who Fit and Dispense Hearing Instruments	§145.102 General Practice Requirements of Audiologists and Interns in Audiology who Fit and Dispense Hearing Instruments
§741.103 Requirements of Audiologists and Interns in Audiology Conducting Audiometric Testing for the Purpose of Fitting and Dispensing Hearing Instruments	§145.103 Requirements of Audiologists and Interns in Audiology Conducting Audiometric Testing for the Purpose of Fitting and Dispensing Hearing Instruments
§741.104 Joint Rule Regarding the Sale of Hearing Instruments	§145.104 Joint Rule Regarding the Sale of Hearing Instruments
Subchapter I. Application Procedures	**Subchapter I. Application Procedures**
§741.111 Application Process	§145.111 Application Process
§741.112 Required Application Materials	§145.112 Required Application Materials
Subchapter J. Licensure Examinations	**Subchapter J. Licensure Examinations**
§741.121 Examination Administration	§145.121 Examination Administration
§741.122 Jurisprudence Examination	§145.122 Jurisprudence Examination
Subchapter K. Issuance of License	**Subchapter K. Issuance of License**
§741.141 Issuance of License	§145.141 Issuance of License
§741.142 Criminal History Record Information Requirement for License Issuance	§145.142 Criminal History Record Information Requirement for License Issuance
Subchapter L. License Renewal and Continuing Professional Education	**Subchapter L. License Renewal and Continuing Professional Education**
§741.161 Renewal Procedures	§145.161 Renewal Procedures
§741.162 Requirements for Continuing Professional Education	§145.162 Requirements for Continuing Professional Education
§741.163 Criminal History Record Information Requirement for License Renewal	§145.163 Criminal History Record Information Requirement for License Renewal
§741.164 Late Renewal of a License	§145.164 Late Renewal of a License
§741.165 Renewal of Licensee on Active Military Duty	§145.165 Renewal of Licensee on Active Military Duty
Subchapter M. Fees and Processing Procedures	**Subchapter M. Fees and Processing Procedures**
§741.181 Schedule of Fees	§145.181 Schedule of Fees
§741.182 Time Periods For Processing Applications and Renewals	§145.182 Time Periods For Processing Applications and Renewals
Subchapter N. Complaints, Violations, Penalties, and Disciplinary Actions	**Subchapter N. Complaints, Violations, Penalties, and Disciplinary Actions**
§741.191 Complaint Procedure	§145.191 Complaint Procedure
§741.192 Disciplinary Action; Notices	§145.192 Disciplinary Action; Notices
§741.193 Revocation, Suspension, Emergency Suspension, or Denial	§145.193 Revocation, Suspension, Emergency Suspension, or Denial
§741.194 Informal Disposition	§145.194 Informal Disposition
§741.195 Formal Hearings; Surrender of License	§145.195 Formal Hearings; Surrender of License
§741.196 Default Orders	§145.196 Default Orders
§741.197 Monitoring of Licensees	§145.197 Monitoring of Licensees

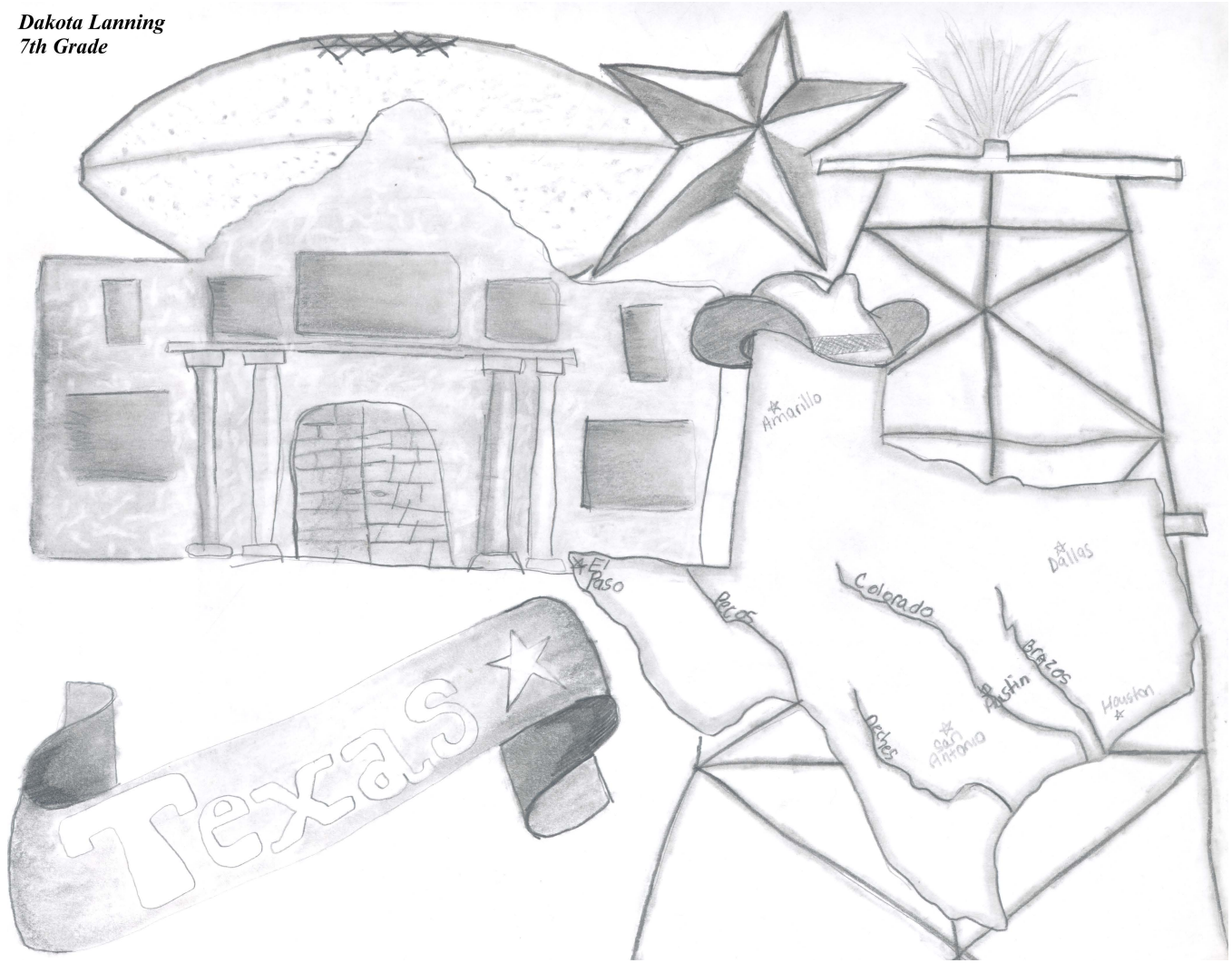
§741.198 Administrative Penalties	§145.198 Administrative Penalties
§741.199 Schedule of Sanctions	§145.199 Schedule of Sanctions
§741.200 Licensing of Persons with Criminal Convictions	§145.200 Licensing of Persons with Criminal Convictions
§741.201 Suspension of License Relating to Child Support and Child Custody	§145.201 Suspension of License Relating to Child Support and Child Custody
§741.202 Request for Criminal History Evaluation Letter	§145.202 Request for Criminal History Evaluation Letter
§741.203 Board Ordered Refund	§145.203 Board Ordered Refund
§741.204 Cease and Desist Order	§145.204 Cease and Desist Order
Subchapter O. Telehealth	**Subchapter O. Telehealth**
§741.211 Definitions Relating to Telehealth	§145.211 Definitions Relating to Telehealth
§741.212 Service Delivery Models of Speech-Language Pathologists	§145.212 Service Delivery Models of Speech-Language Pathologists
§741.213 Requirements for the Use of Telehealth by Speech-Language Pathologists	§145.213 Requirements for the Use of Telehealth by Speech-Language Pathologists
§741.214 Limitations on the Use of Telecommunications Technology by Speech-Language Pathologists	§145.214 Limitations on the Use of Telecommunications Technology by Speech-Language Pathologists
§741.215 Requirements for Providing Telehealth Services in Speech-Language Pathology	§145.215 Requirements for Providing Telehealth Services in Speech-Language Pathology
§741.216 Requirements for Providing Telepractice Services in Audiology	§145.216 Requirements for Providing Telepractice Services in Audiology
Subchapter P. Joint Rules for Fitting and Dispensing of Hearing Instruments by Telepractice	**Subchapter P. Joint Rules for Fitting and Dispensing of Hearing Instruments by Telepractice**
§741.231 Purpose	§145.231 Purpose
§741.232 Definitions	§145.232 Definitions
§741.233 Requirements for Providing Telehealth Services for the Fitting and Dispensing of Hearing Instruments	§145.233 Requirements for Providing Telehealth Services for the Fitting and Dispensing of Hearing Instruments

Figure: Title 16, Chapter 146

Current Rules from Title 2, Part 1 Department of State Health Services Health Professions Regulation	**Transferred to Title 16, Part 4 Texas Department of Licensing and Regulation Chapter 146. Dyslexia Therapists and Dyslexia Practitioners**
Subchapter K. Dyslexia Therapists And Dyslexia Practitioners	**Subchapter K. Dyslexia Therapists And Dyslexia Practitioners**
§140.575 Introduction	§146.575 Introduction
§140.576 Definitions	§146.576 Definitions
§140.577 Fees	§146.577 Fees
§140.578 Petition for Rulemaking	§146.578 Petition for Rulemaking
§140.579 Dyslexia Licensing Advisory Committee	§146.579 Dyslexia Licensing Advisory Committee
§140.580 Application Requirements and Procedures	§146.580 Application Requirements and Procedures
§140.581 Application Processing	§146.581 Application Processing
§140.582 Qualifications for Licensure as a Dyslexia Therapist	§146.582 Qualifications for Licensure as a Dyslexia Therapist
§140.583 Qualifications for Licensure as a Dyslexia Practitioner	§146.583 Qualifications for Licensure as a Dyslexia Practitioner
§140.584 Requirements for Training Programs and Qualified Instructors	§146.584 Requirements for Training Programs and Qualified Instructors
§140.585 Examination for Licensure	§146.585 Examination for Licensure
§140.586 Code of Ethics; Duties and Responsibilities of License Holders	§146.586 Code of Ethics; Duties and Responsibilities of License Holders
§140.587 Renewal of License	§146.587 Renewal of License
§140.588 Changes of Name or Address	§146.588 Changes of Name or Address
§140.589 Continuing Education Requirements	§146.589 Continuing Education Requirements
§140.590 Filing Complaints and Complaint Investigations	§146.590 Filing Complaints and Complaint Investigations
§140.591 Disciplinary Action	§146.591 Disciplinary Action
§140.592 Informal Disposition	§146.592 Informal Disposition
§140.593 Formal Hearings	§146.593 Formal Hearings
§140.594 Schedule of Sanctions	§146.594 Schedule of Sanctions
§140.595 Licensing of Persons with Criminal Backgrounds	§146.595 Licensing of Persons with Criminal Backgrounds
§140.596 Licensing of Military Service Members, Military Veterans, and Military Spouses	§146.596 Licensing of Military Service Members, Military Veterans, and Military Spouses

TRD-201604728 ♦ ♦ ♦

Dakota Lanning
7th Grade



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review §151.3 concerning the Operating Procedures for the Texas Board of Criminal Justice. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

The Texas Board of Criminal Justice proposed amendments to §151.3 in the September 2, 2016, issue of the *Texas Register.*

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of the notice of proposed amendments as filed in the September 2, 2016 issue of the *Texas Register.*

TRD-201604763

Sharon Howell

General Counsel

Texas Department of Criminal Justice

Filed: September 12, 2016

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The Texas Board of Criminal Justice files this notice of intent to review §151.52 concerning the Sick Leave Pool. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

The Texas Board of Criminal Justice proposed amendments to §151.52 in the September 2, 2016, issue of the *Texas Register.*

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of the notice of proposed amendments as filed in the September 2, 2016, issue of the *Texas Register.*

TRD-201604771

Sharon Howell

General Counsel

Texas Department of Criminal Justice

Filed: September 12, 2016

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Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation (Division) will review and consider for readoption, revision, or repeal all sections in the following chapters of Title 28, Part 2 of the Texas Administrative Code, in accordance with §2001.039 of the Texas Government Code:

Chapter 49 - Procedures for Formal Hearings by the Board

Chapter 53 - Carrier's Report of Initiation and Suspension of Compensation Payments

Chapter 55 - Lump Sum Payments

Chapter 56 - Structured Compromise Settlement Agreements

Chapter 57 - Request for Case Folders and Certifications of Actions of the Board

Chapter 59 - Notices of Intention to Appeal

Chapter 114 - Self-Insurance

Chapter 116 - General Provisions - Subsequent Injury Fund

Chapter 144 - Dispute Resolution

Chapter 180 - Monitoring and Enforcement

The division will consider whether the reasons for adopting these rules continue to exist and whether these rules should be readopted, revised, or repealed.

If the division identifies necessary amendments or repeals during this review, the division will propose those amendments or repeals in accordance with Texas Government Code, Chapter 2001.

If you want to comment on whether these rules should be readopted, revised, or repealed, submit your written comments by 5:00p.m. on October 24, 2016. Comments received after that date will not be considered. Send written comments to RuleReviewComments@tdi.texas.gov or by mail to:

Texas Department of Insurance, Division of Workers' Compensation

Maria Jimenez

Workers' Compensation Counsel, MS-4D

7551 Metro Center Drive, Suite 100

Austin, Texas 78744-1645

TRD-201604784

Nicholas Canaday III
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: September 13, 2016

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Windham School District

Title 19, Part 8

The Windham School District Board of Trustees files this notice of intent to review §300.2 concerning Windham School District Board of Trustees Operating Procedures. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

The Windham School District Board of Trustees proposed amendments to §300.2 in the September 2, 2016, issue of the *Texas Register*.

Comments should be directed to Michael Mondville, General Counsel, Windham School District, P.O. Box 40, Huntsville, Texas 77342, Michael.Mondville@wsdtx.org. Written comments from the general public must be received within 30 days of the publication of the notice of proposed amendments as filed in the September 2, 2016, issue of the *Texas Register*.

TRD-201604773
Sharon Howell
General Counsel
Windham School District
Filed: September 12, 2016

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Adopted Rule Reviews

Texas Board of Architectural Examiners

Title 22, Part 1

The Texas Board of Architectural Examiners (Board) has completed the review of Texas Administrative Code, Title 22, Part 1, Chapters 1 and 3, concerning Architects and Landscape Architects, respectively.

The rule review was conducted pursuant to Texas Government Code, §2001.039. Notice of the review of 22 TAC Part 1, Chapters 1 and 3 was published as required in the July 8, 2016, issue of the *Texas Register* (41 TexReg 5077). The Board received no comments in response to that notice.

As a result of internal review by the agency, the Board has determined that amendments to the following rules in Chapter 1 are necessary: §§1.5, 1.24 and 1.148. Additionally, the Board has determined that amendments to the following rules in Chapter 3 are necessary: §§3.5 and 3.24. The proposed amendments to Chapters 1 and 3 are being concurrently published elsewhere in this issue of the Texas Register.

Subject to the proposed rule changes in Chapters 1 and 3, the Board finds that the reasons for initially adopting these rules continue to exist, and readopts each rule in Chapters 1 and 3 in accordance with the requirements of Texas Government Code, §2001.039.

This concludes the review of 22 TAC Part 1, Chapters 1 and 3.

TRD-201604725
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Filed: September 9, 2016

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Texas Board of Chiropractic Examiners

Title 22, Part 3

The Texas Board of Chiropractic Examiners (Board) has completed its review required by the Texas Government Code §2001.039 of the following chapters of Title 22, Part 3 of the Texas Administrative Code:

Chapter 74 - Chiropractic Radiologic Technologists

The reviewed sections in these chapters are subsequently referred to collectively in this Notice of Adopted Review as "the sections."

The notice of proposed rule review was published in the March 11, 2016, issue of the *Texas Register* (41 TexReg 1979). As provided in this notice, the Board reviewed and considered the sections for readoption, revision, or repeal.

The Board considered whether the reasons for adoption of the sections continue to exist. The Board received no written comments regarding the review of the sections.

The Board has determined that the reasons for adopting the sections continue to exist and the sections are retained. Any revisions in the future will be accomplished in accordance with the Administrative Procedure Act.

This concludes and completes the Board's review of Chapter 74. The chapters will be reviewed again in the future in accordance with Government Code §2001.039.

TRD-201604685
Courtney Ebeier
General Counsel
Texas Board of Chiropractic Examiners
Filed: September 7, 2016

♦ ♦ ♦

Texas Workforce Investment Council

Title 40, Part 22

The Texas Workforce Investment Council (Council) adopts the review to Title 40, Texas Administrative Code (TAC), Part 22, Chapter 901, Designation and Redesignation of Local Workforce Development Areas, in accordance with Texas Government Code, §2001.039.

The notice of intention to review Title 40 TAC Chapter 901 was published in the June 24, 2016 issue of the *Texas Register* (41 TexReg 4653). The public comment period closed on July 23, 2016.

No public comments regarding the rule review were received during the 30 day response period.

In reviewing the rules, the Council determined that the original reason for adopting the rules continues to exist. No changes are proposed to the rules as a result of this review.

This rule review is adopted under the authority of Texas Government Code, §2308.101(3) which requires the Council to recommend to the Governor the designation and redesignation of local workforce development areas and §2308.103(a)(1) which authorizes the Council to adopt rules.

This concludes the review of Title 40 TAC, Part 22, Chapter 901. No other code, statute, or article is affected by this rule review.

TRD-201604768
Lee Rector
Director
Texas Workforce Investment Council
Filed: September 12, 2016

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 1 TAC §11.2

Deadline	Documentation Required
01/05/2017	Application Acceptance Period Begins.
01/09/2017	Pre-Application Final Delivery Date (including waiver requests).
02/17/2017	Deadline for submission of application for .ftp access if pre-application not submitted
03/01/2017	Full Application Delivery Date (including Quantifiable Community Participation documentation; Environmental Site Assessments (ESAs), Property Condition Assessments (PCAs); Appraisals; Primary Market Area Map; Site Design and Development 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).
04/01/2017	Market Analysis Delivery Date pursuant to §10.205 of this title.
Mid-May	Final Scoring Notices Issued for Majority of Applications Considered "Competitive."
06/01/2017	Third Party Request for Administrative Deficiency
06/23/2017	Public Comment to be included in the Board presentation for awards
June	Release of Eligible Applications for Consideration for Award in July.
July	Final Awards.
Mid-August	Commitments are Issued.
11/01/2017	Carryover Documentation Delivery Date.
06/30/2018	10 Percent Test Documentation Delivery Date.
12/31/2019	Placement in Service.
Three (3) business days after the date on the Deficiency Notice (without incurring point loss)	Administrative Deficiency Response Deadline (unless an extension has been granted).

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - August 2016

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of crude oil for reporting period August 2016 is $33.39 per barrel for the three-month period beginning on May 1, 2016, and ending July 31, 2016. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of August 2016 from a qualified low-producing oil lease is not eligible for a credit on the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period August 2016 is $1.46 per mcf for the three-month period beginning on May 1, 2016, and ending July 31, 2016. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of August 2016 from a qualified low-producing well is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of August 2016 is $44.80 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of August 2016 from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of August 2016 is $2.72 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of August 2016 from a qualified low-producing gas well.

Inquiries should be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201604787
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Filed: September 13, 2016

♦ ♦ ♦

Local Sales Tax Rate Changes Effective October 2016

A 2 percent local sales and use tax will become effective October 1, 2016, in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Dish (Denton Co)	2061364	.020000	.082500

The 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will be abolished, effective September 30, 2016, in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Buffalo Gap (Taylor Co)	2221067	.017500	.080000
Crystal City (Zavala Co)	2254012	.017500	.080000
Sanctuary (Parker Co)	2184133	.015000	.077500
Skellytown (Carson Co)	2033047	.010000	.072500

The 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government code, Type A Corporations (4A) will be abolished, effective September 30, 2016, in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Brownwood (Brown Co)	2025010	.020000	.082500
Early (Brown Co)	2025038	.020000	.082500

The City sales and use tax will be increased to 1 1/4 percent as permitted under Chapter 321 of the Texas Tax Code, effective October 1, 2016 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Three Rivers (Live Oak Co)	2149020	.020000	.082500

The City sales and use tax will be increased to 1 1/2 percent as permitted under Chapter 321 of the Texas Tax Code, effective October 1, 2016 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Burton (Washington Co)	2239021	.020000	.082500
Cranfills Gap (Bosque Co)	2018073	.020000	.082500
Talty (Kaufman Co)	2129113	.020000	.082500
Vega (Oldham)	2180011	.020000	.082500

The City sales and use tax will be increased to 1 3/4 percent as permitted under Chapter 321 of the Texas Tax Code, effective October 1, 2016 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Alma (Ellis Co)	2070112	.020000	.082500

The City sales and use tax will be increased to 2 percent as permitted under Chapter 321 of the Texas Tax Code, effective October 1, 2016 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Double Oak (Denton Co)	2061248	.020000	.082500
Hallsville (Harrison Co)	2102034	.020000	.082500
Jacinto City (Harris Co)	2101160	.020000	.082500
Pattison (Waller Co)	2237050	.020000	.082500
Waskom (Harrison Co)	2102025	.020000	.082500

An additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective October 1, 2016 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Millsap (Parker Co)	2184080	.017500	.080000

An additional 1/2 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective October 1, 2016 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Danbury (Brazoria Co)	2020079	.020000	.082500

The additional city sales and use tax for Municipal Street Maintenance and Repair will be increased from 1/4 percent to 1/2 percent as permitted under Chapter 327 of the Texas Tax Code will become effective October 1, 2016 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Moulton (Lavaca Co)	2143026	.020000	.082500

The city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government code, Type A Corporations (4A) will be reduced to 1/4 percent, effective September 30, 2016, in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Krum (Denton Co)	2061140	.020000	.082500

An additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government code, Type B Corporations (4B) will become effective October 1, 2016 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Elmendorf (Bexar Co)	2015192	.020000	.082500

An additional 1/2 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code and the City sales and use tax will be increased to 1 1/2 percent as permitted under Chapter 321 of the Texas Tax Code, will become effective October 1, 2016 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Follett (Lipscomb Co)	2148049	.020000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) will be reduced to 1/4 percent and an additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective October 1, 2016 in the cities listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Haslet (Tarrant Co)	2220344	.020000	.082500
Sinton (San Patricio Co)	2205049	.020000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) will be reduced to 3/8 percent and an additional 1/8 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective October 1, 2016 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Port Arthur (Jefferson Co)	2123020	.020000	.082500
Port Arthur (Orange Co)	2123020	.020000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will be abolished effective September 30, 2016 and the adoption of an additional 1/2 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective October 1, 2016 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Rio Vista (Johnson Co)	2126036	.015000	.077500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will be reduced to 1/4 percent and the additional city sales and use tax for Municipal Street Maintenance and Repair will be increased from 1/4 percent to 1/2 percent as permitted under Chapter 327 of the Texas Tax Code will become effective October 1, 2016 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Bartonville (Denton Co)	2061211	.020000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will be abolished effective September 30, 2016, the additional city sales and use tax for Municipal Street Maintenance and Repair will be increased from 1/4 percent to 3/8 percent as permitted under Chapter 327 of the Texas Tax Code and the city sales and use tax will be increased from one percent to 1 3/8 percent as permitted under Chapter 321 of the Texas Tax Code, will become effective October 1, 2016 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Haltom City (Tarrant Co)	2220255	.020000	.082500

The additional 1/4 percent sales and use tax for property tax relief will be abolished effective September 30, 2016 and the additional city sales and use tax for Municipal Street Maintenance and Repair will be increased from 1/4 percent to 1/2 percent as permitted under Chapter 327 of the Texas Tax Code will become effective October 1, 2016 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Lucas (Collin Co)	2043143	.020000	.082500

The additional 1/2 percent sales and use tax for property tax relief will be abolished effective September 30, 2016 and the additional city sales and use tax for Municipal Street Maintenance and Repair will be increased from 1/4 percent to one percent as permitted under Chapter 327 of the Texas Tax Code will become effective October 1, 2016 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Granite Shoals (Burnet Co)	2027036	.020000	.082500

The additional 1/2 percent sales and use tax for property tax relief will be reduced to 3/8 percent effective September 30, 2016 and the adoption of an additional 1/8 percent as permitted under Chapter 504 of the Texas Local Government Code Type A Corporations (4A) will become effective October 1, 2016 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Del Rio (Val Verde Co)	2233018	.020000	.082500

A 1/4 percent special purpose district sales and use tax will become effective October 1, 2016 in the special purpose district listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Krum Crime Control and Prevention District	5061694	.002500	SEE NOTE 1

A 1/2 percent special purpose district sales and use tax will become effective October 1, 2016 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Brownwood Municipal Development District	5025528	.005000	SEE NOTE 2
Early Municipal Development District	5025519	.005000	SEE NOTE 3
Liberty County Emergency Services District No. 7	5146504	.005000	SEE NOTE 4

A one percent special purpose district sales and use tax will become effective October 1, 2016 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Harris County Emergency Services District No. 24	5101954	.010000	SEE NOTE 5
Montgomery County Emergency Services District No.14	5170772	.010000	SEE NOTE 6

A 1 1/2 percent special purpose district sales and use tax will become effective October 1, 2016 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Bexar County Emergency Services District No. 7	5015600	.015000	SEE NOTE 7
Hays County Emergency Services District No. 5-A	5105594	.015000	SEE NOTE 8

A 2 percent special purpose district sales and use tax will become effective October 1, 2016 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Montgomery County Emergency Services District No. 2	5170781	.020000	SEE NOTE 9
Williamson County Emergency Services District No. 3	5246576	.020000	SEE NOTE 10

NOTE 1: The boundaries for the Krum Crime Control and Prevention District are the same as the boundaries for the city of Krum.

NOTE 2: The boundaries of the Brownwood Municipal Development District are the same as the boundaries for the city of Brownwood.

NOTE 3: The boundaries of the Early Municipal Development District are the same as the boundaries for the city of Early.

NOTE 4: The Liberty County Emergency Services District No. 7 is located in the east-central portion of Liberty County, which has a county sales and use tax. The city of Hardin is located entirely within the Liberty County Emergency Services District No. 7. The unincorporated areas of

Liberty County in ZIP Codes 77327, 77369, 77561, 77564 and 77575 are partially located within the Liberty County Emergency Services District No. 7. Contact the district representative at 713-805-5181 for additional boundary information.

NOTE 5: The Harris County Emergency Services District No. 24 is located in the north-central portion of Harris County. The district's boundaries exclude areas of the district which are responsible for collecting and remitting sales and use tax to the city of Houston due to a strategic partnership agreement between a utility district and the city of Houston for the imposition of sales and use tax. The district excludes East Aldine Management District and its special zone which impose special purpose district sales and use tax. The district is located entirely within the Houston MTA, which imposes a transit sales and use tax. The unincorporated areas of Harris County in ZIP Codes 77032, 77039, 77060 and 77073 are partially located in the Harris County Emergency Services District No. 24. Contact the district representative at 713-984-8222 for additional boundary information.

NOTE 6: The Montgomery County Emergency Services District No. 14 is located in the southern portion of Montgomery County. The district excludes any area in The Woodlands Township, which imposes a special purpose district sales tax. The district's boundaries include areas of the district which are also responsible for collecting and remitting sales and use tax to the city of Houston due to a strategic partnership agreement between the utility district and the city. The district does not include any area within the Houston MTA. The unincorporated areas of Montgomery County in ZIP Codes 77380 and 77381 are partially located within the Montgomery County Emergency Services District No. 14. Contact the district representative at 713-984-8222 for additional boundary information.

NOTE 7: The Bexar County Emergency Services District No. 7 is located in the northwestern portion of Bexar County. The district is located entirely within the San Antonio MTA, which imposes a transit sales and use tax. The district does not include any area within the cities of San Antonio or Helotes. The unincorporated areas of Bexar County in ZIP Codes 78023 and 78254 are partially located in the Bexar County Emergency Services District No. 7. Contact the district representative at 210-688-0665 for additional boundary information.

NOTE 8: The Hays County Emergency Services District No. 5-A is the unincorporated area of the original district. The unincorporated areas of Hays County in ZIP Codes 78610, 78640 and 78666 are partially located in the Hays County Emergency Services District No. 5-A. Contact the district representative at 512-268-3131 for additional boundary information.

NOTE 9: Montgomery County Emergency Services District No. 2 is located in the northwestern portion of Montgomery County. The district excludes for sales tax purposes any area in the city of Montgomery and the portion of the city of Conroe that overlaps the district. The unincorporated areas of Montgomery County in ZIP Codes 77316, 77333, 77356, and 77873 are partially located within the Montgomery County Emergency Services District No. 2. Contact the district representative at 713-984-8222 for additional boundary information.

NOTE 10: The Williamson County Emergency Services District No. 3 is located in the south-central portion of Williamson County. The district excludes, for sales tax purposes, any area in the city of Hutto. The unincorporated areas of Williamson County in ZIP Codes 78626, 78634 and 78665 are partially located within the Williamson County Emergency Services District No. 3. Contact the district representative at 512-759-2616 for additional boundary information. Texas

TRD-201604703

Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Filed: September 8, 2016

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/19/16 - 09/25/16 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 09/19/16 - 09/25/16 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-201604785
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 13, 2016

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East Texas Council of Governments

Request for Proposal

East Texas Council of Governments (ETCOG) is soliciting proposals for ETCOG Financial and Compliance Audit 2016 Request for Proposal (RFP) for end of year September 30, 2016. The RFP will be available Tuesday, September 13, 2016, at http://www.etcog.org/314/Request-for-Proposals.htm. Click on 'ETCOG Financial and Compliance Audit 2016 RFP' to obtain a copy of RFP #CG-EFCA16R; RFP updates; and any related pertinent information. Requests for a hardcopy of the RFP and any RFP questions or concerns must be emailed to Trish Hudspeth at patricia.hudspeth@etcog.org for a response. Verbal communications will not be addressed. The RFP submission deadline is Tuesday October 4, 2016, by 10:30 a.m., no exceptions.

TRD-201604721
Lindsay Vanderbilt
Director of Communications
East Texas Council of Governments
Filed: September 9, 2016

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is October 24, 2016. 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, 2016. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission 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: A-PLANTS PLUS, L.L.C. dba Quix 405; DOCKET NUMBER: 2016-0966-PST-E; IDENTIFIER: RN102405495; LOCATION: Robinson, McLennan County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month, and failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $6,630; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Audrey C. Griffin; DOCKET NUMBER: 2016-0955-LII-E; IDENTIFIER: RN106125966; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: landscaping irrigation systems; RULES VIOLATED: 30 TAC §344.35(d)(2), by failing to obtain a permit prior to the installation of an irrigation system; and 30 TAC §344.52(c), by failing to ensure backflow prevention devices are tested prior to being put into service; PENALTY: $751; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Barnett Gathering, LLC; DOCKET NUMBER: 2016-1168-AIR-E; IDENTIFIER: RN105010714; LOCATION: Rendon, Tarrant County; TYPE OF FACILITY: compressor station; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O3114/General Operating Permit Number 511, Site-wide Requirements (b)(3), and Texas Health and Safety Code, §382.085(b), by failing to submit a Permit Compliance Certification no later than 30 days after the end of the certification period; PENALTY: $2,813; ENFORCEMENT COORDINATOR: Molly Ellsworth, (512) 239-2296; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Bee County; DOCKET NUMBER: 2016-1018-PST-E; IDENTIFIER: RN101433365; LOCATION: Beeville, Bee County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases

at a frequency of at least once every month; PENALTY: $2,438; Supplemental Environmental Project offset amount of $1,951; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(5) COMPANY: Capital Metropolitan Transportation Authority; DOCKET NUMBER: 2016-1055-EAQ-E; IDENTIFIER: RN104008966; LOCATION: Austin, Williamson County; TYPE OF FACILITY: transportation services site; RULE VIOLATED: 30 TAC §213.4(j)(3) and Edwards Aquifer Protection Plan Number 11-11021101, Standard Conditions Number 14, by failing to obtain approval of a modification to an approved Water Pollution Abatement Plan prior to initiating a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Melissa Castro, (512) 239-0855; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(6) COMPANY: Cho Huynh dba One Stop; DOCKET NUMBER: 2016-1038-PST-E; IDENTIFIER: RN101843258; LOCATION: Groveton, Trinity County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,504; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: City of Bridgeport; DOCKET NUMBER: 2016-0456-MWD-E; IDENTIFIER: RN102740230; LOCATION: Bridgeport, Wise County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010389003, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $46,000; Supplemental Environmental Project offset amount of $46,000; ENFORCEMENT COORDINATOR: Claudia Corrales, (512) 239-4935; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: City of Commerce; DOCKET NUMBER: 2016-1020-PWS-E; IDENTIFIER: RN101376788; LOCATION: Commerce, Hunt County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter (mg/L) for total trihalomethanes, based on a locational running annual average; 30 TAC §290.115(f)(1) and THSC, §341.0315(c), by failing to comply with the MCL of 0.060 mg/L for total haloacetic acids, based on a locational running annual average; and 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 executive director along with certification that the consumer notification has been distributed for the January 1, 2011 - December 31, 2013, monitoring period; PENALTY: $862; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: City of Decatur; DOCKET NUMBER: 2016-1019-PWS-E; IDENTIFIER: RN101391019; LOCATION: Decatur, Wise County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $762; ENFORCEMENT COORDINATOR: Claudia Corrales, (512) 239-4935; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: City of Fort Worth; DOCKET NUMBER: 2016-1034-PST-E; IDENTIFIER: RN102407970; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: City of Hutchins; DOCKET NUMBER: 2016-0910-WQ-E; IDENTIFIER: RN105506141; LOCATION: Hutchins, Dallas County; TYPE OF FACILITY: small municipal separate storm sewer system (MS4); RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(a)(9)(i)(A), by failing to maintain authorization to discharge stormwater under a Texas Pollutant Discharge Elimination System (TPDES) General Permit for MS4s; and 30 TAC §305.125(1) and TPDES General Permit Numbers TXR040104 and TXR040593, Part IV, Section B(2), by failing to submit concise annual reports to the executive director within 90 days of the end of each reporting year; PENALTY: $15,250; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: City of New Home; DOCKET NUMBER: 2016-1145-PWS-E; IDENTIFIER: RN101389146; LOCATION: New Home, Lynn County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(j)(1)(A) and (B), by failing to have all customer service inspections conducted by an individual that is a Plumbing Inspector or Water Supply Protection Specialist licensed by the Texas State Board of Plumbing Examiners or by a Customer Service Inspector who has completed a commission-approved course, passed an examination administered by the executive director, and holds current professional license as a Customer Service Inspector; PENALTY: $135; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(13) COMPANY: Enbridge G and P (East Texas) L.P.; DOCKET NUMBER: 2016-0980-AIR-E; IDENTIFIER: RN106051568; LOCATION: Teneha, Shelby County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O3491, General Terms and Conditions and Special Terms and Conditions Number 11, by failing to submit a permit compliance certification no later than 30 days after the end of the certification period; PENALTY: $2,813; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: Enbridge Pipelines (Texas Gathering) L.P.; DOCKET NUMBER: 2016-1056-AIR-E; IDENTIFIER: RN106175219; LOCATION: Wheeler, Wheeler County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification no later than 24 hours after the discovery of an emissions event; and 30 TAC §106.6(c), THSC, §382.085(b), and Permit by Rule Registration Number 96954, by failing to prevent unauthorized emissions; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Rajesh

Acharya, (512) 239-0577; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(15) COMPANY: G and R Kunwar Incorporated dba Bob and Fred Convenience Store; DOCKET NUMBER: 2016-0881-PST-E; IDENTIFIER: RN101565901; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.244(3) and Texas Health and Safety Code (THSC), §382.085(b), by failing to conduct the monthly inspections of pressure/vacuum relief valves, vapor check valves, or the Stage I dry breaks; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative receive training and instruction in the operation and maintenance of the Stage II vapor recovery system; 30 TAC §115.246(a)(1) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $7,461; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: HOLLYWOOD FOOD AND GAS INCORPORATED dba Medina Base Quick Mart; DOCKET NUMBER: 2016-0610-PST-E; IDENTIFIER: RN101432912; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(2) and TWC, §26.3475(d), by failing to ensure the underground storage tank (UST) corrosion protection system is operated and maintained in a manner that will ensure continuous corrosion protection; 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 a suspected release of a regulated substance within 30 days of discovery; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $18,731; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(17) COMPANY: Intertek USA Incorporated; DOCKET NUMBER: 2016-0771-IHW-E; IDENTIFIER: RN100573641; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: chemical testing facility; RULES VIOLATED: 30 TAC §335.9(a)(1), by failing to maintain records of all hazardous and industrial solid waste activities; 30 TAC §335.6(c)(4), by failing to update the facility's Notice of Registration; 30 TAC §335.474 and §335.479, by failing to prepare and update a five-year source reduction and waste minimization plan on-site and failing to submit the source reduction waste minimization plan to the TCEQ Regional Office; and 30 TAC §335.9(a)(2)(A) and (B), by failing to submit a complete and correct Annual Waste Summary for 2014; PENALTY: $12,564; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: ISA AND TAGHREED ENTERPRISES, INCORPORATED dba South Main Service Station; DOCKET NUMBER: 2016-0934-PST-E; IDENTIFIER: RN100702786; LOCATION: Stafford, Fort Bend 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 for releases at a frequency of at least once every month; PENALTY: $4,375; ENFORCEMENT COORDINATOR: Steven Stump, (512) 239-1343; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: Jesse Gibson and Vivian R. Gibson dba ETC Cleaners; DOCKET NUMBER: 2016-0737-DCL-E; IDENTIFIER: RN103997185; LOCATION: Waxahachie, Ellis County; TYPE OF FACILITY: dry cleaning drop station; RULES VIOLATED: 30 TAC §337.11(e) and Texas Health and Safety Code, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Benjamin Sakmar, (512) 239-1704; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Kamila Investments, Incorporated dba Countryside Ice; DOCKET NUMBER: 2016-0816-PST-E; IDENTIFIER: RN102145844; LOCATION: San Antonio, Bexar 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 for releases at a frequency of at least once every month; PENALTY: $6,750; ENFORCEMENT COORDINATOR: Sandra Douglas, (512) 239-2549; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(21) COMPANY: Lakeby LLC dba My Stop; DOCKET NUMBER: 2016-1075-PST-E; IDENTIFIER: RN101663391; LOCATION: Waco, McLennan County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,566; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(22) COMPANY: MAYFAIR USA INVESTMENT, INCORPORATED dba Corner Shell; DOCKET NUMBER: 2016-0891-PST-E; IDENTIFIER: RN101794071; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month, and failing to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; and 30 TAC §334.77(a)(2), by failing to visually inspect any above ground releases or exposed below ground releases and prevent further migration of the released substance into surrounding soils and groundwater; PENALTY: $7,313; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(23) COMPANY: MONA ENTERPRISES, INCORPORATED dba Shop In Market; DOCKET NUMBER: 2016-0785-PST-E; IDENTIFIER: RN101782282; LOCATION: Houston, Harris 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 for releases at a frequency of at least once every month; 30 TAC §334.49(e)(1), by failing to maintain corrosion protection records and make them immediately available for inspection upon request by agency personnel; and 30 TAC §334.605(a), by failing to ensure that a certified Class A and Class B operator is re-trained within three years of their last training date; PENALTY: $7,363; ENFORCEMENT COORDINATOR:

Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: NASKAL INVESTMENTS, INCORPORATED dba Knox Super Stop; DOCKET NUMBER: 2016-1206-PST-E; IDENTIFIER: RN102253978; LOCATION: Red Oak, Ellis 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 for releases at a frequency of at least once every month; PENALTY: $4,875; ENFORCEMENT COORDINATOR: Steven Stump, (512) 239-1343; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: PAKG ENTERPRISES INCORPORATED dba Speedy Express; DOCKET NUMBER: 2016-0730-PST-E; IDENTIFIER: RN102231529; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the underground storage tanks (USTs) within 30 days of the occurrence of the change or addition; 30 TAC §334.48(b), by failing to ensure that the UST system is operated, maintained, and managed in accordance with accepted industry practices; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; 30 TAC §334.49(c)(2)(C) and (4)(C) and TWC, §26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly, and failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.54(b)(1) and (2), by failing to keep the UST system vent lines open and functioning, and failing to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube for each regulated UST at the facility according to the UST registration and self-certification form; and 30 TAC §37.875(a) and §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $16,303; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Philecon, Incorporated dba Tall Tree Marina; DOCKET NUMBER: 2016-0711-PST-E; IDENTIFIER: RN101878759; LOCATION: Mount Vernon, Franklin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month, and failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; PENALTY: $6,879; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(27) COMPANY: Pioneer Natural Resources USA, Incorporated; DOCKET NUMBER: 2016-0086-AIR-E; IDENTIFIER: RN100223452; LOCATION: Masterson, Moore County; TYPE OF FACILITY: natural gas pipeline compression station and tank battery; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Federal Operating Permit Number O3077, General Terms and Conditions, and Texas Health and Safety Code, §382.085(b), by failing to submit a deviation report no later than 30 days after the end of the reporting period; PENALTY: $3,075; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(28) COMPANY: PRICEWISE LLC dba Pricewise 105; DOCKET NUMBER: 2016-0504-PST-E; IDENTIFIER: RN101617165; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d) and §334.54(e)(2), by failing to comply with applicable registration requirements for taking an underground storage tank (UST) system temporarily out-of-service; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and 30 TAC §334.54(c)(2) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; PENALTY: $7,818; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(29) COMPANY: S AND S B ENTERPRISES INCORPORATED dba Zara Food Mart; DOCKET NUMBER: 2016-0871-PST-E; IDENTIFIER: RN102355369; LOCATION: San Antonio, Bexar 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 for releases at a frequency of at least once every month; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(30) COMPANY: S TUM CORPORATION dba C and C Grocery; DOCKET NUMBER: 2016-1078-PST-E; IDENTIFIER: RN101233823; LOCATION: Brazoria, Brazoria County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month, and failing to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; 30 TAC §334.45(c)(3)(A), by failing to properly install/secure emergency shut-off valves at the base of all dispensers; 30 TAC §334.8(c)(5)(A)(iii), by failing to have a current, valid TCEQ delivery certificate posted at the station; 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; and 30 TAC §115.241(b)(1)(A) and (2), by failing to perform and complete all Stage II decommissioning activities; PENALTY: $9,470; ENFORCEMENT COORDINATOR: Jessica Bland, (512) 239-4967; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(31) COMPANY: Saad and Sidra, LLC dba Kaiser Food Mart; DOCKET NUMBER: 2016-0768-PST-E; IDENTIFIER: RN102362217; LOCATION: Tyler, Smith County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,567; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512)

239-2576; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(32) COMPANY: Sandeep Kaur dba City Mart; DOCKET NUMBER: 2016-0928-PST-E; IDENTIFIER: RN101542322; LOCATION: Sherman, Grayson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank (UST) system; 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator - Class A, Class B, and Class C; and 30 TAC §334.49(a)(4) and TWC, §26.3475(d), by failing to provide corrosion protection to all underground metal components of a UST system which are designed or used to convey, contain, or store regulated substances; PENALTY: $8,755; ENFORCEMENT COORDINATOR: Tiffany Maurer, (512) 239-2696; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(33) COMPANY: Seadrift Coke L.P.; DOCKET NUMBER: 2015-1732-AIR-E; IDENTIFIER: RN102147055; LOCATION: Port Lavaca, Calhoun County; TYPE OF FACILITY: Petroleum Needle Coke production plant; RULES VIOLATED: 30 TAC §§122.132(e)(4)(C), 122.142(e)(2), 122.143(4), and 122.145(1)(C), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O1370, Special Terms and Conditions (STC) Number 11, by failing to submit semi-annual Compliance Schedule certified progress reports no later than 30 days after the end of each reporting period; 30 TAC §111.111(a)(8)(A) and §122.143(4), THSC, §382.085(b), and FOP Number O1370, STC Number 3.B.i, by failing to prevent visible emissions; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), THSC, §382.085(b), FOP Number O1370, STC Numbers 7 and 11, and New Source Review (NSR) Permit Numbers 70898 and PSDTX410M3, Special Conditions (SC) Number 11, by failing to adhere to the provisions in a Compliance Schedule; 30 TAC §§101.20(3), 116.115(b), and 122.143(4), THSC, §382.085(b), FOP Number O1370, STC Number 11, and NSR Permit Numbers 70898 and PSDTX410M3, SC Number 46.B, by failing to record hourly green coke feed rates to the calcining kiln; 30 TAC §§101.20(3), 116.115(b), 116.116(b)(1), and 122.143(4), THSC, §382.085(b), FOP Number O1370, STC Number 7, and NSR Permit Numbers 70898 and PSDTX410M3, General Conditions, by failing to comply with representations in a permit application; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), THSC, §382.085(b), FOP Number O1370, STC Number 7, and NSR Permit Numbers 70898 and PSDTX410M3, SC Number 49, by failing to convey processed wastewater in a piped/covered system to the Wastewater Treatment Station; 30 TAC §116.110(a) and §122.143(4), THSC, §382.085(b) and §382.0518(a), and FOP Number O1370, General Terms and Conditions (GTC), by failing to obtain authorization prior to constructing and operating the surface coating operations; 30 TAC §122.143(4) and §122.145(2)(A), THSC, §382.085(b), and FOP Number O1370, GTC, by failing to include all instances of deviations; and 30 TAC §101.201(b)(1) and §122.143(4), THSC, §382.085(b), and FOP Number O1370, STC Number 2.F, by failing to create complete and accurate final records of all non-reportable emissions events no later than two weeks after the end of the emissions events; PENALTY: $50,671; Supplemental Environmental Project offset amount of $20,268; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(34) COMPANY: Southwest Landfill TX, LP; DOCKET NUMBER: 2016-0760-MSW-E; IDENTIFIER: RN102064151; LOCATION: Canyon, Randall County; TYPE OF FACILITY: landfill; RULES VIOLATED: 30 TAC §330.15(e)(7) and §330.133(c), by failing to prevent the acceptance of regulated hazardous waste at a municipal solid waste facility; PENALTY: $13,500; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(35) COMPANY: Star Houston, Incorporated dba Star Motor Cars; DOCKET NUMBER: 2016-0917-PST-E; IDENTIFIER: RN100602598; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and(5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $3,673; ENFORCEMENT COORDINATOR: Shelby Orme, (512) 239-4575; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(36) COMPANY: STOCKDALE ENTERPRISES, L.L.C. dba Dyess Parkview Market; DOCKET NUMBER: 2016-0874-PST-E; IDENTIFIER: RN101868727; LOCATION: Seguin, Guadalupe 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 for releases at a frequency of at least once every month; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(37) COMPANY: Sunoco Partners Marketing and Terminals L.P.; DOCKET NUMBER: 2015-1512-AIR-E; IDENTIFIER: RN100214626; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: petroleum storage terminal; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review (NSR) Permit Number 56508, Special Conditions (SC) Number 1, Federal Operating Permit (FOP) Number O1573, Special Terms and Conditions (STC) Number 10, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the permitted emissions rate; 30 TAC §§101.20(2), 113.100, 116.115(b)(2)(E)(i) and (c), and 122.143(4), 40 Code of Federal Regulations (CFR) §63.10(b)(1) and (2)(vii), NSR Permit Number 56508, SC Number 2.A., FOP Number O1573, STC Number 10, and THSC, §382.085(b), by failing to comply with the recordkeeping requirements of 40 CFR Part 63, Subpart A; 30 TAC §122.143(4), FOP Number O1573, STC Number 3.A.(iv)(3), and THSC, §382.085(b), by failing to maintain sufficient records of quarterly visible emissions observations; and 30 TAC §122.145(2)(A) and §122.143(4), FOP Number O1573, General Terms and Conditions, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: $72,340; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(38) COMPANY: Sunsilk Investments LLC dba Fast Fuels; DOCKET NUMBER: 2016-0896-PST-E; IDENTIFIER: RN106368129; LOCATION: Tyler, Smith 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 tank for releases at a frequency of at least once every month; and 30 TAC §334.602(a), by failing to designate at least one Class C operator for the facility; PENALTY: $4,400; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(39) COMPANY: Targa Midstream Services LLC; DOCKET NUMBER: 2016-1080-AIR-E; IDENTIFIER: RN100238716; LOCATION: Chico, Wise County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), Texas Health and Safety Code (THSC), §382.085(b), and New Source Review Permit Number 84108, Special Conditions Number 1, by failing to prevent unauthorized emissions; and 30 TAC §101.201(c) and THSC, §382.085(b), by failing to submit a final record for Incident Number 226889 within 14 days of the end of the emissions event; PENALTY: $3,681; ENFORCEMENT COORDINATOR: Kingsley Coppinger, (512) 239-6581; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(40) COMPANY: Texas State University; DOCKET NUMBER: 2016-0472-PWS-E; IDENTIFIER: RN100221480; LOCATION: San Marcos, Hays 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) and 40 Code of Federal Regulations (CFR) §141.87 and §141.90(a), by failing to conduct water quality parameter sampling at each of the facility's entry points and the required distribution sample site(s) for the two consecutive six-month periods (January 1, 2015 - June 30, 2015, and July 1, 2015 - December 31, 2015), following the January 1, 2014 - December 31, 2014, monitoring period during which the copper action level was exceeded, have the samples analyzed, and report the results to the executive director (ED), and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to conduct all of the required water quality parameter sampling during the January 1, 2015 - June 30, 2015, monitoring period; 30 TAC §290.117(f)(3)(A) and §290.122(b)(2)(A) and (f) and 40 CFR §§141.81(e)(1), 141.82(a), and 141.90(c)(2), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the January 1, 2014 - December 31, 2014, monitoring period during which the copper action level was exceeded, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a recommendation to the ED for optimal corrosion control treatment; 30 TAC §290.117(g)(2)(A) and §290.122(b)(2)(A) and (f) and 40 CFR §141.83 and §141.90(d)(1), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2014 - December 31, 2014, monitoring period during which the copper action level was exceeded, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a recommendation to the ED for source water treatment; and 30 TAC §290.122(c)(2)(A) and (f), by failing to timely provide public notification and submit a copy of the public notification to the ED regarding the failure to conduct raw groundwater source monitoring after a coliform positive result in April 2012; PENALTY: $870; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(41) COMPANY: Tong Ky Vun dba Alvin Food Mart 2; DOCKET NUMBER: 2016-1021-PWS-E; IDENTIFIER: RN101245850; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; and 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; PENALTY: $122; ENFORCEMENT COORDINATOR: Sarah Kim, (512) 239-4728; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(42) COMPANY: VILLAGE FARMS, L.P.; DOCKET NUMBER: 2016-0470-PWS-E; IDENTIFIER: RN100818087; LOCATION: Fort Davis, Jeff Davis County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to timely submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director (ED) each quarter by the tenth day of the month following the end of the third quarter of 2015; 30 TAC §290.117(c)(2)(A), (h), and (i)(1) and 40 Code of Federal Regulations (CFR) §141.86 and §141.90(a), by failing to collect lead and copper tap samples at the required ten sample sites for one six-month monitoring period (January 1, 2015 - June 30, 2015), following the January 1, 2014 - December 31, 2014, monitoring period during which the copper action level was exceeded, have the samples analyzed, and report the results to the ED; 30 TAC §290.117(d)(2)(A), (h), and (i)(2), §290.122(c)(2)(A) and (f) and 40 CFR §141.88 and §141.90(b), by failing to collect one lead and copper sample from each of the facility's entry points no later than 180 days after the end of the January 1, 2014 - December 31, 2014, monitoring period during which the copper action level was exceeded, have the samples analyzed, and report the results to the ED, and failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to collect one lead and copper sample from each of the facility's entry points no later than 180 days after the end of the January 1, 2014 - December 31, 2014, monitoring period; 30 TAC §290.117(e)(2), (h), and (i)(3), §290.122(c)(2)(A) and (f) and 40 CFR §141.87 and §141.90(a), by failing to conduct water quality parameter sampling at each of the facility's entry points and the required distribution sample site(s) for two consecutive six-month periods (January 1, 2015 - June 30, 2015, and July 1, 2015 - December 31, 2015), following the January 1, 2014 - December 31, 2014, monitoring period during which the copper action level was exceeded, have the samples analyzed, and report the results to the ED, and failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to conduct all of the required water quality parameter sampling during the January 1, 2015 - June 30, 2015, monitoring period; 30 TAC §290.117(f)(3)(A) and §290.122(b)(2)(B) and (f) and 40 CFR §§141.81(e)(1), 141.82(a), and 141.90(c)(2), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the January 1, 2014 - December 31, 2014, monitoring period during which the copper action level was exceeded, and failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to submit a recommendation to the ED for optimal corrosion control treatment; and 30 TAC §290.117(g)(2)(A) and §290.122(b)(2)(B) and (f) and 40 CFR §141.83 and §140.90(d)(1), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2014 - December 31, 2014, monitoring period during which the copper action level was exceeded, and failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to submit a recommendation to the ED for source water treatment; PENALTY: $1,311; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(43) COMPANY: Yeti Group, LLC dba Mansell Grocery and Feed; DOCKET NUMBER: 2016-0767-PST-E; IDENTIFIER: RN101539211; LOCATION: Italy, Ellis 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 for releases at a frequency of at least once every month; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201604779
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 13, 2016

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, or commission) staff is providing an opportunity for written public comment on the listed 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 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, 2016.** 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 A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 24, 2016.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on the AO shall be submitted to the commission in **writing.**

(1) COMPANY: Gilbert V. Perez; DOCKET NUMBER: 2015-1576-MSW-E; TCEQ ID NUMBER: RN106672827; LOCATION: 723 County Road 2000, Pearsall, Frio County; TYPE OF FACILITY: property that contains and/or involves the management of municipal solid waste (MSW); RULES VIOLATED: 30 TAC §330.7(a) and §330.15(a), and TCEQ Agreed Order Docket Number 2013-1063-MSW-E, Ordering Provision number 2.b., by causing, suffering, allowing, or permitting any activity of storage, processing, removal, or disposal of MSW without authorization from the TCEQ; and by causing, suffering, allowing, or permitting the unauthorized collection, storage, processing or disposal of MSW; PENALTY: $6,500; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: OAK TERRACE ESTATES, INC. and Robert M. Smith; DOCKET NUMBER: 2015-1830-PWS-E; TCEQ ID NUMBER: RN102673902; LOCATION: intersection of Oak Crest Drive and Lively Oak Street, Livingston, Polk County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.117(c)(2)(C) and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification or submit a copy of the public notification to the executive director regarding the failure to submit a disinfectant level quarterly operating report and by failing to collect routine coliform distribution samples; PENALTY: $1,107; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Robert M. Smith and OAK TERRACE ESTATES, INC.; DOCKET NUMBER: 2015-1108-PWS-E; TCEQ ID NUMBER: RN102673902; LOCATION: intersection of Oak Crest Drive and Lively Oak Street, Livingston, Polk County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(f)(2), (3)(A)(i)(III), (iii) and (iv), and (B)(ii) and (iii), by failing to maintain water works operation and maintenance records and make them available for review to commission personnel; Texas Health and Safety Code, §341.0315(c) and 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all time; and 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; PENALTY: $740; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: Texas Concrete Enterprise, L.L.C.; DOCKET NUMBER: 2015-1771-WQ-E; TCEQ ID NUMBER: RN100888056; LOCATION: 955 Grayson Road, Houston, Harris County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System General Permit Number TXG111072, Part II Standard Permit Condition Section D, by failing to submit a Notice of Termination, on a form approved by the executive director, when the owner or operator of the facility changed and by failing to submit a Notice of Termination after the property was sold on September 6, 2012; PENALTY: $1,370; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201604782
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 13, 2016

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code

(TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 24, 2016.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about a DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 24, 2016.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Alfonzo Campos, Sr.; DOCKET NUMBER: 2016-0009-WOC-E; TCEQ ID NUMBER: RN107594962; LOCATION: 8060 Sims Drive, Beeville, Bee County; TYPE OF FACILITY: public water system; RULES VIOLATED: TWC, §37.003, Texas Health and Safety Code, §341.034(b), and 30 TAC §30.5(a) and §30.381(b), by failing to obtain a valid water system operator's license prior to performing process control duties in the production, treatment, and distribution of public drinking water; PENALTY: $436; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(2) COMPANY: CHAU MANAGEMENT, Inc. d/b/a Times Market 101 and d/b/a Times Market 102; DOCKET NUMBER: 2013-0187-PST-E; TCEQ ID NUMBERS: RN101748911 and RN101752194; LOCATION: 630 North Virginia Street (Facility 1) and 107 Seadrift Street (Facility 2), Port Lavaca, Calhoun County; TYPE OF FACILITY: underground storage tank (UST) systems and convenience store with retail sale of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs (Facility 1 and 2); TWC, §26.3475(d) and 30 TAC §334.49(c)(4), by failing to test the cathodic protection system for performance and operability at a frequency of at least once every three years (Facility 1); and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) (Facility 1 and 2); PENALTY: $19,558; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(3) COMPANY: Stan H. Kyle; DOCKET NUMBER: 2016-0377-MSW-E; TCEQ ID NUMBER: RN108725334; LOCATION: 1085 County Road 2650, Shelbyville, Shelby County; TYPE OF FACILITY: property that contains and/or involves the management of municipal solid waste (MSW); RULE VIOLATED: 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: $1,312; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: Ted Booher d/b/a Rapid Environmental Services, LLC; DOCKET NUMBER: 2015-1845-MLM-E; TCEQ ID NUMBER: RN103145876; LOCATION: 15721 Montana Avenue, El Paso, El Paso County; TYPE OF FACILITY: used oil and used oil filter storage, transfer, and transport facility; RULES VIOLATED: 40 Code of Federal Regulations (CFR) §122.26(c), 30 TAC §281.25(a)(4), and Texas Pollutant Discharge Elimination System General Permit Number TXR050000, Part II, Section C, Number 6(a)(1), by failing to submit an notice of change within 14 days after the occurrence of an operator name change; 30 TAC §§324.4(2)(C)(i), 324.11(2), and 328.24(a) and (b), by failing to register prior to conducting used oil and used oil filter activities at the facility; 30 TAC §328.24(e) and §324.22(c), by failing to provide financial responsibility with registration to assure the facility has sufficient assets to provide for proper closure; 40 CFR §§112.3, 112.7, and 279.45 and 30 TAC §328.28, by failing to develop a plan to prevent spills and respond to spill in accordance with the federal spill prevention, control, and countermeasure requirements; 40 CFR §279.45(g) and 30 TAC §324.11, by failing to mark or clearly label used oil storage containers with the words "Used Oil"; and 40 CFR §279.45(h)(3) and 30 TAC §324.11 and §324.4(1), by failing to prevent the disposal of used oil on the ground; PENALTY: $3,300; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

TRD-201604783
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 13, 2016

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Notice of Opportunity to Comment on Shutdown/Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the pub-

lic comment period closes, which in this case is **October 24, 2016.** The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 24, 2016.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorney is available to discuss the S/DO and/or the comment procedure at the listed phone number; however, comments on the S/DO shall be submitted to the commission in **writing.**

(1) COMPANY: H Shaheen LLC dba AM Food Mart; DOCKET NUMBER: 2015-0973-PST-E; TCEQ ID NUMBER: RN101381705; LOCATION: 1602 Highway 6 South, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $4,500; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201604781
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 13, 2016

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 114

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 114, Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) Revisions, §114.7 and §114.64, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement Chapter 114 to incorporate the federal Tier 3 emission standards, established under 40 Code of Federal Regulations Section 86.1811-17, as an eligibility component for replacement vehicles and as a determinant for the replacement compensation amount. The proposed amendments would also specify that no more than $600 in assistance may be granted annually per vehicle for emissions-related repairs to pass the required annual emissions inspection. Finally, the proposed rulemaking would provide more detail to the definition of "engine" and make other non-substantive clarifying changes as needed for accuracy and consistency.

The commission will hold a public hearing on this proposal in Austin on October 20, 2016, at 2:00 p.m., in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www1.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2016-031-114-AI. The comment period closes October 24, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Alison Stokes, Air Quality Division, (512) 239-2428.

TRD-201604720
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: September 9, 2016

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Notice of Public Hearings and Opportunity to Comment on the Edwards Aquifer Protection Program

The Texas Commission on Environmental Quality (TCEQ or commission) will conduct 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. This requirement assists the commission in its shared responsibility with local governments such as cities and groundwater conservation districts to protect the water quality of the aquifer.

Annual hearings are held on the Edwards Aquifer Protection Program and the TCEQ rules, 30 Texas Administrative Code Chapter 213, which regulate development over the delineated contributing, recharge and transition zones of the Edwards Aquifer.

There will be two hearings held at the following times and locations:

Monday, October 24, 2016, at 2:00 p.m. at the Tesoro Building, Alamo Area Council of Governments, Al J. Notzon III Board Room, 8700 Tesoro Drive, Suite 100 San Antonio, Texas 78217

Tuesday, October 25, 2016, at 2:00 p.m. at the TCEQ's central office located at, 12100 Park 35 Circle, Building E, Room 201S, Austin, Texas 78753

These hearings will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon. There will be no open discussion during the hearings; however, commission staff members will be available to answer questions 30 minutes prior to and 30 minutes after the conclusion of each hearing. Registration will begin 30 minutes prior to each hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the Austin hearing should contact the Office of Administrative Services Facilities Liaison at (512) 239-0080. Persons requesting accommodations for the San Antonio hearing should contact Ms. Macy Beauchamp at (512) 239-0437. Requests should be made as far in advance as possible.

Written comments should reference the Edwards Aquifer Protection Program and may be sent to Ms. Macy Beauchamp, Texas Commission on Environmental Quality, Program Support Section, MC 174, P.O. Box 13087, Austin, Texas 78711-3087, faxed to (512) 239-2249, or emailed to *macy.beauchamp@tceq.texas.gov.* Comments must be received by **5:00 p.m., November 28, 2016.** For further information or questions concerning these hearings, please contact Ms. Beauchamp at (512) 239-0437, or visit *https://www.tceq.texas.gov/field/eapp/history.html.*

TRD-201604778
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: September 13, 2016

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Notice of Water Rights Application

Notices issued September 12, 2016

APPLICATION NO. 13164; Intercontinental Terminals Company, LLC, P.O. Box 698, Deer Park, Texas 77536, Applicant, seeks a temporary water use permit to divert and use not to exceed 95 acre-feet of water within a period of three years from two points, on an unnamed tributary of Buffalo Bayou and on Buffalo Bayou, San Jacinto River Basin for industrial purposes in Harris County. The application and partial fees were received on October 25, 2014. Additional information and fees were received on May 19, and May 22, 2015. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on September 10, 2015. The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to installing a measuring device for diversions. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F., Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by September 30, 2016.

APPLICATION NO. 14-1891C; The Sara Jean Cameron Estate, 302 CR 320, San Saba, Texas 76877, Applicant, Estate has applied to amend Certificate of Adjudication No. 14-1891 to add an additional diversion point and place of use on the San Saba River, Colorado River Basin in Menard County. Applicant does not seek to increase the diversion rate. The application and partial fees were received on November 1, 2013. Additional information and fees were received on April 28 and July 7, 2014. The application was declared administratively complete and accepted for filing on September 3, 2015. The Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would contain special conditions including, but not limited to, the installation of metering devices. The application, technical memoranda, and Executive Director's draft amendment are available for reviewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg F., Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by September 29, 2016.

APPLICATION NO. 13195; Hidalgo County Drainage District No. 1, 902 North Doolittle Road Edinburg, Texas 78542, Applicant, seeks authorization to construct and maintain an off-channel reservoir (Panchita Reservoir); and to divert water from a diversion point on the South Main Drain (Diversion Point 1) and three diversion segments on the North Main Drain and Main Floodwater Channel (Diversion Segments 1 - 3), Nueces-Rio Grande Coastal Basin, for domestic, municipal, mining, agricultural, industrial, hydroelectric power generation, recreational, flood control and water quality purposes or for storage in the Panchita Reservoir or existing off-channel reservoirs owned by the Santa Cruz Irrigation District and the Engleman Irrigation District for subsequent diversion and use in Hidalgo and Willacy Counties. The application and partial fees were received on May 11, 2015. Additional information and fees were received July 13, September 25, and November 3, 2015. The application was declared administratively complete and filed with the Office of the Chief Clerk on November 20, 2015. Additional information was received on December 4, 2015. The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would contain special conditions including, but not limited to, a requirement to measure the quantity diverted and maintain measurement records. The application and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F., Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at *www.tceq.state.tx.us/comm_exec/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 web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement (I/we) request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the

TCEQ can be found at our web site at *www.tceq.state.tx.us*. Si desea información en español, puede llamar al (800) 687-4040.

TRD-201604797
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 14, 2016

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Texas Superfund Registry 2016

BACKGROUND

The Texas Commission on Environmental Quality (TCEQ or commission) is required under the Texas Solid Waste Disposal Act, Texas Health and Safety Code (THSC), Chapter 361 to identify, to the extent feasible, and evaluate facilities which may constitute an imminent and substantial endangerment to public health and safety or to the environment due to a release or threatened release of hazardous substances into the environment. The first registry identifying these sites was published on January 16, 1987, in the *Texas Register* (12 TexReg 205). In accordance with THSC, §361.181, the commission must update the state Superfund registry annually to add new facilities that have been proposed for listing in accordance with THSC, §361.184(a) and listed in accordance with THSC, §361.188(a)(1) (see also 30 Texas Administrative Code (TAC) §335.343) or to remove facilities that have been deleted in accordance with THSC, §361.189 (see also 30 TAC §335.344). The current notice also includes facilities where state Superfund action has ended, or where cleanup is being adequately addressed by other means.

SITES LISTED ON THE STATE SUPERFUND REGISTRY

In accordance with THSC, §361.188(a)(1), the state Superfund registry identifying those facilities that are *listed* and have been determined to pose an imminent and substantial endangerment in descending order of Hazard Ranking System (HRS) scores are as follows.

1. Col-Tex Refinery. Located on both sides of Business Interstate Highway 20 (United States Highway 80) in Colorado City, Mitchell County: tank farm and refinery.

2. First Quality Cylinders. Located at 931 West Laurel Street, San Antonio, Bexar County: aircraft cylinder rebuilder.

3. James Barr Facility. Located in the 3300 block of Industrial Drive, in the southern part of Pearland, Brazoria County: vacuum truck waste storage.

4. Pioneer Oil Refining Company. Located at 20280 South Payne Road, outside of Somerset, Bexar County: oil refinery.

5. Precision Machine and Supply. Located at 500 West Olive Street, Odessa, Ector County: chrome plating and machine shop.

6. Voda Petroleum Inc. Located approximately 1.25 miles west of the intersection of Farm-to-Market Road (FM) 2275 (George Richey Road) and FM 3272 (North White Oak Road), 2.6 miles north-northeast of Clarksville City, Gregg County: waste oil recycling.

7. Sonics International, Inc. Located north of Farm Road 101, approximately two miles west of Ranger, Eastland County: industrial waste injection wells.

8. Maintech International. Located at 8300 Old Ferry Road, Port Arthur, Jefferson County: chemical cleaning and equipment hydroblasting.

9. Federated Metals. Located at 9200 Market Street, Houston, Harris County: magnesium dross/sludge disposal, inactive landfill.

10. International Creosoting. Located at 1110 Pine Street, Beaumont, Jefferson County: wood treatment.

11. McBay Oil and Gas. Located approximately three miles northwest of Grapeland on Farm Road 1272, Houston County: oil refinery and oil reclamation plant.

12. Materials Recovery Enterprises (MRE). Located about four miles southwest of Ovalo, near United States Highway 83 and Farm Road 604, Taylor County: Class I industrial waste management.

13. American Zinc. Located approximately 3.5 miles north of Dumas on United States Highway 287 and five miles east of Dumas on Farm Road 119, Moore County: zinc smelter.

14. Toups. Located on the west side of Texas 326, 2.1 miles north of its intersection with Texas 105, in Sour Lake, Hardin County: fencepost treating and municipal waste.

15. Harris Sand Pits. Located at 23340 South Texas 16, approximately 10.5 miles south of San Antonio at Von Ormy, Bexar County: commercial sand and clay pit.

16. JCS Company. Located north of Phalba on County Road 2415, approximately 1.5 miles west of the intersection of County Road 2403 and Texas 198, Van Zandt County: lead-acid battery recycling.

17. Jerrell B. Thompson Battery. Located north of Phalba on County Road 2410, approximately one mile north of the intersection of County Road 2410 and Texas 198, Van Zandt County: lead-acid battery recycling.

18. Spector Salvage Yard. Located at Jackson Avenue and Tenth Street, Orange, Orange County: military surplus and chemical salvage yard.

19. Hayes-Sammons Warehouse. Located at Miller Avenue and East Eighth Street, Mission, Hidalgo County: commercial grade pesticide storage.

20. Jensen Drive Scrap. Located at 3603 Jensen Drive, Houston, Harris County: scrap salvage.

21. State Highway 123 PCE Plume. Located near the intersection of State Highway 123 and Interstate Highway 35 in San Marcos, Hays County: contaminated groundwater plume.

22. Baldwin Waste Oil Company. Located on County Road 44 approximately 0.1 mile west of its intersection with Farm Road 1889, Robstown, Nueces County: waste oil processing.

23. Hall Street. Located north of the intersection of 20th Street East with California Street, north of Dickinson, Galveston County: waste disposal and landfill/open field dumping.

24. Unnamed Plating. Located at 6816 - 6824 Industrial Avenue, El Paso, El Paso County: metals processing and recovery.

25. Tricon America, Inc. Located at 101 East Hampton Road, Crowley, Tarrant County: aluminum and zinc smelting and casting.

SITES PROPOSED FOR LISTING ON THE STATE SUPERFUND REGISTRY

In accordance with THSC, §361.184(a) those facilities that may pose an imminent and substantial endangerment and that have been *proposed* to the state Superfund registry are set out in descending order of HRS scores as follows.

1. Kingsland. Located in the vicinity of the 2100 and 2400 blocks of FM Road 1431 in the community of Kingsland, Llano County: two groundwater plumes.

2. Rogers Delinted Cottonseed - Colorado City. Located near the intersection of Interstate Highway 20 and State Highway 208 in Colorado City, Mitchell County: cottonseed delinting, processing.

3. Camtraco Enterprises, Inc. Located at 18823 Amoco Drive in Pearland, Brazoria County: fuel storage/fuel blending/distillation.

4. Angus Road Groundwater Site. Located beneath the 4300 block of Angus Road, west of Odessa, Ector County: groundwater plume of unknown source.

5. Industrial Road/Industrial Metals. Located at 3000 Agnes Street in Corpus Christi, Nueces County: lead acid battery recycling and copper coil salvage.

6. Tenaha Wood Treating. Located at 275 County Road 4382, about a mile and a half south of the city limits and near the intersection of United States Highway 96 and County Road 4382, Tenaha, Shelby County: wood treatment.

7. Poly-Cycle Industries, Inc., Tecula. Located northeast of Tecula on the southeast corner of the intersection of FM 2064 and County Road 4216, Cherokee County: lead acid battery recycling.

8. Sherman Foundry. Located at 532 East King Street in south central Sherman, Grayson County: cast iron foundry.

9. Process Instrumentation and Electrical (PIE). Located at the northwest corner of 48th Street and Andrews Highway (Highway 385) in Odessa, Ector County: chromium plating.

10. Marshall Wood Preserving. Located at 2700 West Houston Street, Marshall, Harrison County: wood treatment.

11. Avinger Development Company (ADCO). Located on the south side of State Highway 155, approximately 0.25 mile east of the intersection with State Highway 49, Avinger, Cass County: wood treatment.

12. Hu-Mar Chemicals. Located north of McGothlin Road, between the old Southern Pacific Railroad tracks and 12th Street, Palacios, Matagorda County: pesticide and herbicide formulation.

13. Moss Lake Road Groundwater Site. Located approximately 0.25 mile north of the intersection of North Moss Lake Road and Interstate Highway 20, approximately four miles east of Big Spring, Howard County: groundwater plume of an unknown source.

14. Ballard Pits. Located at the end of Ballard Lane, west of its intersection with County Road 73, approximately 5.8 miles north of Robstown, Nueces County: disposal of oil field drilling muds and petroleum wastes.

15. Cass County Treating Company. Located at 304 Hall Street within the southeastern city limits of Linden, Cass County: wood treatment.

16. Tucker Oil Refinery/Clinton Manges Oil Refinery. Located on the east side of United States Highway 79 in the rural community of Tucker, Anderson County: oil refinery.

17. Bailey Metal Processors, Inc. Located one mile northwest of Brady on Highway 87, McCulloch County: scrap metal dealer, primarily conducting copper and lead reclamation.

18. City View Road Groundwater Plume. Located northwest of the intersection of Interstate Highway 20 and State Highway 158, Midland County: groundwater contamination plume.

19. Mineral Wool Insulation Manufacturing Company. Located on Shaw Road at the northwest corner of the city limits of Rogers, Bell County: mineral wool manufacturing.

20. Scrub-A-Dubb Barrel Company. Located at 1102 North Ash Avenue, Lubbock, Lubbock County: former drum cleaning and reconditioning business.

CHANGES SINCE THE SEPTEMBER 2015 SUPERFUND REGISTRY PUBLICATION

Since the last *Texas Register* publication of the state Superfund registry on September 25, 2015, (40 TexReg 6777), no additional sites were proposed or listed on the state Superfund registry. Two sites, the EmChem Corporation site and the Woodward Industries, Inc. site, were deleted from the state Superfund registry. The EmChem Corporation site was eligible for deletion due to its acceptance into the TCEQ Voluntary Cleanup Program. The commission has deleted the Woodward Industries, Inc. site from the state Superfund program because it has been determined that due to the removal actions performed, the site no longer presents an endangerment to human health or the environment.

SITES DELETED FROM THE STATE SUPERFUND REGISTRY

To date, 54 sites have been *deleted* from the state Superfund registry in accordance with THSC, §361.189 (see also 30 TAC §335.344).

Aluminum Finishing Company, Harris County; Archem Company/Thames Chelsea, Harris County; Aztec Ceramics, Bexar County; Aztec Mercury, Brazoria County; Barlow's Wills Point Plating, Van Zandt County; Bestplate, Inc., Dallas County; Butler Ranch, Karnes County; Cox Road Dump Site, Liberty County; Crim-Hammett, Rusk County; Dorchester Refining Company, Titus County; Double R Plating Company, Cass County; El Paso Plating Works, El Paso County; EmChem Corporation, Brazoria County; Force Road Oil, Brazoria County; Gulf Metals Industries, Harris County; Hagerson Road Drum, Fort Bend County; Harkey Road, Brazoria County; Hart Creosoting, Jasper County; Harvey Industries, Inc., Henderson County; Hicks Field Sewer Corp., Tarrant County; Hi-Yield, Hunt County; Higgins Wood Preserving, Angelina County; Houston Lead, Harris County; Houston Scrap, Harris County; J.C. Pennco Waste Oil Service, Bexar County; Kingsbury Metal Finishing, Guadalupe County; LaPata Oil Company, Harris County; Lyon Property, Kimble County; McNabb Flying Service, Brazoria County; Melton Kelly Property, Navarro County; Munoz Borrow Pits, Hidalgo County; Newton Wood Preserving, Newton County; Niagara Chemical, Cameron County; Old Lufkin Creosoting, Angelina County; Permian Chemical, Ector County; Phipps Plating, Bexar County; PIP Minerals, Liberty County; Poly-Cycle Industries, Ellis County; Poly-Cycle Industries, Jacksonville, Cherokee County; Rio Grande Refinery I, Hardin County; Rio Grande Refinery II, Hardin County; Rogers Delinted Cottonseed-Farmersville, Collin County; Sampson Horrice, Dallas County; SESCO, Tom Green County; Shelby Wood Specialty, Inc., Shelby County; Solvent Recovery Services, Fort Bend County; South Texas Solvents, Nueces County; State Marine, Jefferson County; Stoller Chemical Company, Hale County; Texas American Oil, Ellis County; Thompson Hayward Chemical, Knox County; Waste Oil Tank Services, Harris County; Woodward Industries, Inc., Nacogdoches and Wortham Lead Salvage, Henderson County.

REMOVAL FROM INCLUSION

The Lindsay Post Company Site, located in Alto, Cherokee County, was removed from inclusion on the registry as a site that was proposed for listing in the January 22, 1988, issue of the *Texas Register* (13 TexReg 427).

How to Access Agency Records

Agency records for these sites may be accessible for viewing or copying by contacting the TCEQ Central File Room (CFR) Customer Service Center, Building E, North Entrance, at 12100 Park 35 Circle, Austin, Texas 78753, phone number (512) 239-2900, fax (512) 239-

1850, or e-mail *cfrreq@tceq.texas.gov.* CFR Customer Service Center staff will assist with providing program area contacts for records not maintained in the CFR. Also, inquiries concerning the agency Superfund program records may be directed to Superfund staff at the Superfund toll free line (800) 633-9363 or e-mail *superfnd@tceq.texas.gov.* Parking for mobility impaired persons is available on the east side of Building D, convenient to access ramps that are located between Buildings D and E. There is no charge for viewing the files, however, copying of file information is subject to payment of a fee.

TRD-201604780
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 13, 2016

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Golden Crescent Workforce Development Board

Request for Proposals - Program Monitor - WSGC

The Golden Crescent Workforce Development Board is seeking proposals for Program Monitor for its Workforce Centers in the Golden Crescent. The response Deadline is September 23, 2016. A copy of the Request for Proposals can be found on our website at www.gcworkforce.org. Any questions regarding this RFP need to be directed to the Executive Director at henryguajardo@gcworkforce.org

TRD-201604724
Henry Guajardo
Executive Director
Golden Crescent Workforce Development Board
Filed: September 9, 2016

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Texas Health and Human Services Commission

Public Notice - Waiver Renewal to the Texas Home Living (TxHmL)

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request for a renewal to the Texas Home Living (TxHmL) waiver program, a waiver implemented under the authority of section 1915(c) of the Social Security Act. CMS has approved this waiver through February 28, 2017. The proposed effective date for the renewal is March 1, 2017, with no changes to cost neutrality.

This renewal request proposes to make the following changes:

Pursuant to the 84th Texas Legislature, 2015, Regular Session, the HHSC transition plan for the Texas Department of Aging and Disability Services (DADS) requires the integration of DADS into the HHSC system. Please note the subsequent language modifications made throughout the application:

Department of Aging and Disability Services to Health and Human Services Commission (DADS - HHSC);

"local authority" to "local intellectual and developmental disability authority";

Operating Agency to State Medicaid Agency;

"consumer" to "individual" and other such changes related to person-first language; and

"consumer directed services agency" to "financial management services agency."

The following paragraphs identify and describe the substantial changes to the following appendices that are being revised and include a description of the revision, respectively.

Appendix A: Waiver Administration and Operation

Language was adjusted to reflect the agency transformation, in which DADS, the current operating agency, is being integrated into the HHSC system. Consistent with CMS regulations, performance measures were removed from this assurance based on HHSC responsibility for both operating and regulating the program.

Appendix B: Participant Access and Eligibility

Unduplicated number of participants and point in time numbers for all waiver years were updated.

Eligibility group Medicaid Buy-In for Children (MBIC) (under age 19) §1902(a)(10)(A)(ii)(XIX), §1902(cc)(1) has been removed from the list of other specified groups as the MBIC group only applies to the 300% Special Income Limit groups.

Eligibility groups SSI Recipient §1902(a)(10)(A)(i)(ll) and Medicaid Buy-In (MBI) §1902(a)(10)(A)(ii)(XIII) were removed from the list of other specified groups as they are identified B4b.

Appendix C: Participant Services

Through the Medicaid State Plan, Community First Choice (CFC), habilitation, and personal assistance services are now available to all individuals receiving TxHmL waiver services. Transportation services are included exclusively in Community Supports for individuals receiving TxHmL waiver services.

Changed provider type name from financial management services agencies to consumer directed services direct service provider; no change to services will occur due to this change.

Added that Respite services cannot be provided at the same time as Community Supports or CFC state plan services.

Updated the service definition for Financial Management Services.

The service definition of Respite was modified to include the provision that Respite cannot be provided at the same time as Community Supports or CFC state plan services.

The State is changing the name of Support Consultation Services to Support Consultation. This change does not affect the service.

The State is changing the name of Audiology to Audiology Services. This change does not affect the services.

The State is changing the name of Dental to Dental Treatment. This change does not affect the services.

Limitations to Dental Treatment were updated to include the following language: This waiver service is only provided to individuals age 21 and over. All medically necessary Dental Treatment for children under the age of 21 are covered in the state plan pursuant to the [Early and Periodic Screening, Diagnostic, and Treatment] EPSDT benefit.

The State is changing the name of Dietary to Dietary Service. This change does not affect the services.

The State is changing the name of Occupational Therapy to Occupational Therapy Services. This change does not affect the services.

The State is changing the name of Physical Therapy to Physical Therapy Services. This change does not affect the services.

Limitations to Physical Therapy Services were updated to include the following language: This waiver service is only provided to individuals age 21 and over. All medically necessary Physical Therapy services for children under the age of 21 are covered in the state plan pursuant to the EPSDT benefit.

Limitations to Occupational Therapy Services were updated to include the following language: This waiver service is only provided to individuals age 21 and over. All medically necessary Occupational Therapy services for children under the age of 21 are covered in the state plan pursuant to the EPSDT benefit.

The State is changing the name of Skilled Nursing to Nursing. This change does not affect the services.

The State is changing the name of Speech/Language Therapy to Speech-Language Pathology to better represent the services. This change will not affect the service.

Limitations to Speech-Language Therapy were updated to include the following language: This waiver service is only provided to individuals age 21 and over. All medically necessary Speech-Language Pathology services for children under the age of 21 are covered in the state plan pursuant to the EPSDT benefit."

The list of examples of Adaptive Aids was removed from this service definition and a hyperlink to the complete list of billable Adaptive Aids is provided.

The provider standard, other standard for Adaptive Aids has been modified to accurately reflect the standard.

Cost limit for Adaptive Aids services was adjusted to $10,000 because the previous $6,000 annual limit was listed in error; this change is made to reflect what is currently offered in TxHmL.

Update Criminal History and Background Checks for providers of Consumer Directed Services (CDS) to reflect new requirements.

General Service Specifications, open enrollment of providers process has been updated to include a requirement for financial management agencies to obtain a Medicaid provider agreement. This is not a new requirement and is added to accurately reflect current requirements.

Administrative penalties were added as an additional method of remediation for program providers who do not comply with TxHmL rules.

Methods for remediation of financial management services agencies were updated.

Appendix D: Service Delivery

Respite is modified to include the provision that Respite cannot be provided at the same time as community supports or Community First Choice state plan services.

Administrative penalties were added as an additional method of remediation for program providers.

Appendix G: Health and Welfare

Language regarding restraint, seclusion and restrictive intervention was clarified.

Administrative penalties were added as an additional method of remediation for program providers who do not comply with TxHmL rules.

Appendix I: Financial Accountability

Fiscal responsibility was updated to reflect current practices, and the rate methodology was updated to include a legislatively-mandated spending requirement related to a rate increase effective September 1, 2015.

Methods for Remediation/Fixing Individual Problems was updated.

Appendix J:

Unduplicated number of participants and point in time numbers for all waiver years were updated.

TxHmL provides essential community-based services and supports to individuals with an intellectual and developmental disability living in their own homes or with their families. Services and supports are intended to enhance quality of life, functional independence, and health and well-being in continued community-based living and to enhance, rather than replace, existing informal or formal supports and resources. Services include day habilitation, respite, supported employment, prescription medications, financial management services, support consultation, adaptive aids, audiology services, behavioral support, community support, dental treatment, dietary service, employment assistance, minor home modifications, occupational therapy services, physical therapy services, nursing, and speech-language pathology.

An individual may obtain a free copy of the proposed waiver renewal, including the TxHmL settings transition plan, or if you have questions, need additional information, or wish to submit comments regarding this renewal or the TxHmL settings transition plan, interested parties may contact Jacqueline Pernell by U.S. mail, telephone, fax, or email. The addresses are as follows:

U.S. Mail

Texas Health and Human Services Commission

Attention: Jacqueline Pernell, Waiver Coordinator, Policy Development Support

P.O. Box 13247

Mail Code H-600

Austin, Texas 78711-3247

Telephone

(512) 428-1931

Fax

Attention: Jacqueline Pernell, Waiver Coordinator, at (512) 730-7477

Email

TX_Medicaid_Waivers@hhsc.state.tx.us.

In addition, the HHSC local offices will post this notice for 30 days. The complete waiver amendment request can be found online on the DADS website at:

http://www.dads.state.tx.us/providers/HCS/.

The DADS local offices will post this notice for 30 days. The complete waiver application can be found online on the DADS website at:

http://www.dads.state.tx.us/providers/CLASS/

TRD-201604796
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: September 14, 2016

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Texas Department of Housing and Community Affairs

Notice of Funding Availability (NOFA) for the Texas Department of Housing and Community Affairs "FY 2017 Texas Bootstrap Loan Program"

I. Source of Funds.

The Texas Bootstrap Loan Program is funded through the Housing Trust Fund which was established by the 72nd Legislature, Senate Bill 546, Texas Government Code §2306.201, to create affordable housing for low- and very low-income households. Funding sources consist of appropriations or transfers made to the fund, unencumbered fund balances, and public or private gifts, grants, or donations.

II. Notice of Funding Availability (NOFA) Summary.

The Texas Department of Housing and Community Affairs (the "Department"), through its Single Family Operations and Services Division, announces the availability of approximately $3,000,000 of State of Texas Housing Trust Funds for Fiscal Year 2017 for the Texas Bootstrap Loan ("Bootstrap") Program. The funding will be available for reservation on Tuesday, September 27, 2016. The Department will continue to accept reservations on an ongoing basis until August 31, 2018, or until all funding has been committed. Additional funds may be added to this NOFA from loan repayments, interest earnings and deobligations from prior years.

The purpose of the Bootstrap Program is to purchase land and/or build new residential or improve existing residential housing through self-help construction methods for Owner-Builders, including persons with special needs, whose household income does not exceed 60 percent of the Area Median Family Income.

To be able to reserve Bootstrap Program funds on behalf of Owner-Builders, nonprofit organizations must undergo certification as a "Nonprofit Owner-Builder Housing Provider" (NOHP) by the Department and execute a loan origination agreement. Two-thirds of the funds are set aside for Owner-Builders with property in census tracts with median incomes not exceeding 75 percent of the current state median income. The remaining one-third is released statewide.

III. Additional Information.

The "FY 2017 Texas Bootstrap Loan Program" NOFA is posted on the Department's website at http://www.tdhca.state.tx.us/oci/bootstrap.htm. Questions regarding the Bootstrap Program NOFA may be addressed to Raul Gonzales at (512) 475-1473 or raul.gonzales@tdhca.state.tx.us.

TRD-201604789
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 13, 2016

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by HEALTHCARE UNDERWRITERS GROUP, INC., a foreign fire and/or casualty company. The home office is in Columbus, Ohio.

Correction:

In the August 12, 2016, issue of the *Texas Register* (41 TexReg 6125), an application for METLIFE INSURANCE COMPANY USA, Wilmington, Delaware, a foreign life, accident and/or health company to change its name to BRIGHTHOUSE INSURANCE COMPANY was published. The correct name is BRIGHTHOUSE LIFE INSURANCE COMPANY.

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 Jeff Hunt, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201604803
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: September 14, 2016

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Notice of Filing

The Texas Automobile Insurance Plan Association (TAIPA) filed a private passenger and commercial automobile insurance rate filing on September 7, 2016, under Insurance Code, §2151.202. The commissioner has not scheduled a hearing because the rate filed does not exceed 105 percent of the current average rate for each coverage written through the association. *See* Insurance Code, §2151.2041.

You may review TAIPA's rate filing by visiting the link at the bottom of this notice, or you may review it in the Office of the Chief Clerk at the Texas Department of Insurance during regular business hours at 333 Guadalupe St., Austin, Texas. For further information or to request a copy of the filing, please contact the Office of the Chief Clerk by phone at (512) 676-6585 or by email at ChiefClerk@tdi.texas.gov (refer to Petition No. A-0916-11).

If you wish to submit written comments related to the filing, please do so before October 5, 2016. You must provide two copies of your comments. Send one copy to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104; or email it to ChiefClerk@tdi.texas.gov. Send the other copy to J'ne Byckovski, Chief Actuary, Texas Department of Insurance, Property and Casualty Actuarial Office, Mail Code 105-5F, P.O. Box 149104, Austin, Texas 78714-9104; or you may email it to PCActuarial@tdi.texas.gov.

TRD-201604802
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: September 14, 2016

♦ ♦ ♦

Notice of Public Hearing

The commissioner of insurance will hold a public hearing to determine whether a necessity exists to suspend the Texas Medical Liability Insurance Underwriting Association's (JUA) authority to issue new insurance policies. Insurance Code §2203.4515 requires the commissioner to make this determination, after notice and hearing. The public hearing will be held:

Docket No. 2792

9:30 a.m., Central Time

October 17, 2016

Room 100, Willian P. Hobby Jr. State Office Building

333 Guadalupe St., Austin, Texas 78701

To submit written comments, please provide two copies no later than 5:00 p.m., Central Time, Friday, October 14, 2016. Please send one

copy to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, or by email to ChiefClerk@tdi.texas.gov. Send the other copy to Marianne Baker, Director, Property and Casualty Lines Office, Mail Code 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, or by email to Marianne.Baker@tdi.texas.gov. We will also accept written and oral comments at the public hearing.

TRD-201604804
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: September 14, 2016

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Texas Lottery Commission

Scratch Ticket Game Number 1760 "Word Games"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1760 is "WORD GAMES". The play style is "crossword".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 1760 shall be $3.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1760.

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-imaged games. The possible black Play Symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, 2X SYMBOL, 3X SYMBOL, $3.00, $5.00, $10.00, $15.00, $20.00, $30.00, $50.00, $100, $500, $5,000 and $50,000.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol Captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1760 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	
2X SYMBOL	2TIMES
3X SYMBOL	3TIMES
$3.00	THR$
$5.00	FIV$
$10.00	TEN$
$15.00	FFN$
$20.00	TWY$
$30.00	TRTY$
$50.00	FIFTY$
$100	ONHN
$500	FVHN
$5,000	FVTH
$50,000	50TH

E. Serial Number - A unique 13 (thirteen) 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. Low-Tier Prize - A prize of $3.00, $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $50.00, $100 or $500.

H. High-Tier Prize - A prize of $5,000 or $50,000.

I. Bar Code - A 24 (twenty-four) 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 Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Scratch Ticket number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1760), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1760-0000001-001.

K. Pack - A Pack of "WORD GAMES" Scratch Ticket Game contains 125 Scratch Tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 125 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 book 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 125 will be shown on the back of the Pack.

L. 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.

M. Scratch Ticket Game, Scratch Ticket or Ticket - A Texas Lottery "WORD GAMES" Scratch Ticket Game No. 1760 Ticket.

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, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "WORD GAMES" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose up to 77 (seventy-seven) possible Play Symbols. The player must scratch ALL of the YOUR 18 LETTERS. The player then scratches ALL the letters found in GAME 1, GAME 2 and GAME 3 that exactly match the YOUR 18 LETTERS. If the player has matched ALL of the letters in a WORD with the YOUR 18 LETTERS, the player wins the PRIZE for that WORD. If the player has matched ALL of the letters in a WORD with a 2X MULTIPLIER, the player wins 2 TIMES the PRIZE for that WORD. If the player has matched ALL of the letters in a WORD with a 3X MULTIPLIER, the player wins 3 TIMES the PRIZE for that WORD. In each GAME, every lettered square within an unbroken horizontal (left to right) sequence must be matched with the YOUR 18 LETTERS to be considered a complete WORD. Words revealed in a vertical or diagonal sequence are not considered valid WORDS. Words within WORDS are not eligible for a prize. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket Game.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Seventy-seven (77) possible Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Play Symbols in this game do not have Play Symbol Captions;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch 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, Retailer Validation Code and Pack-Scratch 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 77 (seventy-seven) possible Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch 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 77 (seventy-seven) possible Play Symbols must be exactly one of those described in §1.2.C of these Game Procedures;

17. Each of the 77 (seventy-seven) possible 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 Pack-Scratch Ticket Number must be printed in the Pack-Scratch 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 Texas Lottery 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 in a Pack will not have matching play data, spot for spot.

B. The top Prize Symbol will appear on every Ticket in GAME 1 unless restricted by other parameters, play action or prize structure.

C. Each Ticket will contain two (2) three-letter words, four (4) four-letter words, three (3) five-letter words and one (1) six-letter word.

D. A minimum of 3 vowels will always appear in the YOUR 18 LETTERS play area. Vowels are considered to be A, E, I, O and U.

E. A minimum of twelve (12) letters in the YOUR 18 LETTERS play area will open at least one (1) letter of a word on a Ticket.

F. All words used on the Ticket will be different.

G. All words used will be from the TEXAS APPROVED WORD LIST CASHWORD/CROSSWORD v.1.1 dated July 2, 2015.

H. The presence or absence of any letter or combination of letter in the YOUR 18 LETTERS play area will not be indicative of winning or non-winning Ticket.

I. There will be no matching letters in the YOUR 18 LETTERS play area.

J. Words from the TEXAS REJECTED WORD LIST v2.2 dated July 2, 2015 will not appear horizontally, vertically or diagonally in the YOUR 18 LETTERS play area.

K. The MULTIPLIER Play Symbols will always appear within the correct GAME (GAME 2 used the "2X" (2TIMES) Play Symbol and GAME 3 uses the "3X" (3TIMES) Play Symbol).

L. No matching non-winning Prize Symbols within a GAME.

M. A winning Prize Symbol will never match a non-winning Prize Symbol on a Ticket.

N. No three (3) or more matching non-winning Prize Symbols on a Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "WORD GAMES" Scratch Ticket Game prize of $3.00, $5.00, $10.00, $15.00, $20.00, $30.00, $50.00, $100 or $500, a claimant shall sign the back of the Ticket in the space designated on the Scratch Ticket and 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, $50.00, $100 or $500 Scratch Ticket. 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 §2.3.B and 2.3.C of these Game Procedures.

B. To claim a "WORD GAMES" Scratch Ticket Game prize of $5,000 or $50,000, the claimant must sign the winning Scratch Ticket and 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 "WORD GAMES" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. 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:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. 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;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as 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 §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 "WORD GAMES" 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 "WORD GAMES" 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 Instant Prizes. There will be approximately 6,000,000 Scratch Tickets in the Scratch Ticket Game No. 1760. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1760 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$3	624,000	9.62
$5	432,000	13.89
$10	192,000	31.25
$15	96,000	62.50
$20	72,000	83.33
$30	26,250	228.57
$50	20,750	289.16
$100	6,000	1,000.00
$500	750	8,000.00
$5,000	20	300,000.00
$50,000	3	2,000,000.00

*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 4.08. 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 Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

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. 1760 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 Texas Lottery Scratch Ticket closing procedures and the Instant 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. 1760, 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-201604776

Bob Biard
General Counsel
Texas Lottery Commission
Filed: September 12, 2016

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Scratch Ticket Game Number 1807 "Super Loteria"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1807 is "SUPER LOTERIA". The play style is "row/column/diagonal".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1807 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1807.

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: THE MOCKINGBIRD SYMBOL, THE CACTUS SYMBOL, THE STRAWBERRY SYMBOL, THE ROADRUNNER SYMBOL, THE BAT SYMBOL, THE PIÑATA SYMBOL, THE COWBOY SYMBOL, THE NEWSPAPER SYMBOL, THE SUNSET SYMBOL, THE COWBOY HAT SYMBOL, THE COVERED WAGON SYMBOL, THE MARACAS SYMBOL, THE LONE STAR SYMBOL, THE CORN SYMBOL, THE HEN SYMBOL, THE SPEAR SYMBOL, THE GUITAR SYMBOL, THE FIRE SYMBOL, THE MORTAR PESTLE SYMBOL, THE WHEEL SYMBOL, THE PECAN TREE SYMBOL, THE JACKRABBIT SYMBOL, THE BOAR SYMBOL, THE ARMADILLO SYMBOL, THE LIZARD SYMBOL, THE CHILE PEPPER SYMBOL, THE HORSESHOE SYMBOL, THE HORSE SYMBOL, THE SHOES SYMBOL, THE BLUEBONNET SYMBOL, THE CHERRIES SYMBOL, THE OIL RIG SYMBOL, THE MOONRISE SYMBOL, THE RATTLESNAKE SYMBOL, THE WINDMILL SYMBOL, THE SPUR SYMBOL, THE SADDLE SYMBOL, $5.00, $10.00, $15.00, $20.00, $50.00, $100, $200, $500, $5,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1807 - 1.2D

PLAY SYMBOL	CAPTION
THE MOCKINGBIRD SYMBOL	THEMOCKINGBIRD
THE CACTUS SYMBOL	THE CACTUS
THE STRAWBERRY SYMBOL	THESTRAWBERRY
THE ROADRUNNER SYMBOL	THEROADRUNNER
THE BAT SYMBOL	THE BAT
THE PIÑATA SYMBOL	THE PIÑATA
THE COWBOY SYMBOL	THECOWBOY
THE NEWSPAPER SYMBOL	THENEWSPAPER
THE SUNSET SYMBOL	THE SUNSET
THE COWBOY HAT SYMBOL	THECOWBOYHAT
THE COVERED WAGON SYMBOL	THECOVEREDWAGON
THE MARACAS SYMBOL	THE MARACAS
THE LONE STAR SYMBOL	THE LONE STAR
THE CORN SYMBOL	THE CORN
THE HEN SYMBOL	THE HEN
THE SPEAR SYMBOL	THE SPEAR
THE GUITAR SYMBOL	THE GUITAR
THE FIRE SYMBOL	THE FIRE
THE MORTAR PESTLE SYMBOL	THEMORTARPESTLE
THE WHEEL SYMBOL	THE WHEEL
THE PECAN TREE SYMBOL	THEPECANTREE
THE JACKRABBIT SYMBOL	THEJACKRABBIT
THE BOAR SYMBOL	THE BOAR
THE ARMADILLO SYMBOL	THEARMADILLO
THE LIZARD SYMBOL	THELIZARD
THE CHILE PEPPER SYMBOL	THECHILEPEPPER
THE HORSESHOE SYMBOL	THEHORSESHOE
THE HORSE SYMBOL	THE HORSE

THE SHOES SYMBOL	THE SHOES
THE BLUEBONNET SYMBOL	THEBLUEBONNET
THE CHERRIES SYMBOL	THECHERRIES
THE OIL RIG SYMBOL	THEOILRIG
THE MOONRISE SYMBOL	THE MOONRISE
THE RATTLESNAKE SYMBOL	THERATTLESNAKE
THE WINDMILL SYMBOL	THEWINDMILL
THE SPUR SYMBOL	THE SPUR
THE SADDLE SYMBOL	THESADDLE
$5.00	FIV$
$10.00	TEN$
$15.00	FTN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$200	TOHN
$500	FVHN
$5,000	FVTH
$100,000	100THOU

E. Serial Number - A unique 13 (thirteen) 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. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100, $200 or $500.

H. High-Tier Prize - A prize of $5,000 or $100,000.

I. Bar Code - A 24 (twenty-four) 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 Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1807), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1807-0000001-001.

K. Pack - A Pack of the "SUPER LOTERIA" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. 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.

M. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "SUPER LOTERIA" Scratch Ticket Game No. 1807.

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, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "SUPER LOTERIA" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 52 (fifty-two) Play Symbols. The player scratches the CALLER'S CARD area to reveal 21 symbols. The player scratches ONLY the symbols on the PLAY BOARD that match the symbols revealed on the CALLER'S CARD. If the player reveals a complete row, column, or diagonal line, the player wins the prize for that line. BONUS GAMES: The player scratches ONLY the symbols on the LOTERIA BONUS GAMES that match the symbols revealed on the CALLER'S CARD. If a player reveals all 4 symbols in any one GAME, the player wins the PRIZE for that GAME. El jugador raspa las CARTAS DEL GRITON para revelar 21 símbolos. El jugador raspa SO-

LAMENTE los símbolos en la TABLA DE JUEGO que son iguales a los símbolos revelados en las CARTAS DEL GRITON para revelar una línea completa horizontal, vertical, o diagonal para ganar el premio para esa línea. JUEGOS DE BONO: El jugador raspa SOLAMENTE los símbolos de los JUEGOS DE BONO DE LA LOTERIA que son iguales a los símbolos revelados de la CARTA DEL GRITÓN. Si el jugador revela todos los 4 símbolos en cualquier JUEGO, el jugador gana el PREMIO para ese JUEGO. 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 52 (fifty-two) 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, Retailer Validation Code and Pack-Scratch 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, Retailer Validation Code and Pack-Scratch 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 52 (fifty-two) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch 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 52 (fifty-two) Play Symbols must be exactly one of those described in §1.2.C of these Game Procedures;

17. Each of the 52 (fifty-two) 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 Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to six (6) times in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play Symbol patterns. Two (2) Tickets have matching Play Symbol patterns if they have the same Play Symbols in the same positions.

C. No matching Play Symbols in the CALLER'S CARD play area.

D. At least eight (8), but no more than twelve (12), CALLER'S CARD Play Symbols will match a symbol on the PLAY BOARD play area on a Ticket.

E. CALLER'S CARD Play Symbols will have a random distribution on the Ticket unless restricted by other parameters, play action or prize structure.

F. No matching Play Symbols are allowed on the PLAY BOARD play area.

G. BONUS GAMES: Every Bonus Game Grid will match at least one (1) Play Symbol to the CALLER'S CARD.

2.3 Procedure for Claiming Prizes.

A. To claim a "SUPER LOTERIA" Scratch Ticket Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100, $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 §2.3.B and §2.3.C of these Game Procedures.

B. To claim a "SUPER LOTERIA" Scratch Ticket Game prize of $5,000 or $100,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SUPER LOTERIA" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both 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:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. 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;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as 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 §2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "SUPER LOTERIA" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "SUPER LOTERIA" 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 Ticket Prizes. There will be approximately 40,080,000 Scratch Tickets in Scratch Ticket Game No. 1807. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1807 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	4,809,600	8.33
$10	4,008,000	10.00
$15	534,400	75.00
$20	534,400	75.00
$50	534,400	75.00
$100	167,334	239.52
$200	27,388	1,463.41
$500	4,008	10,000.00
$5,000	100	400,800.00
$100,000	20	2,004,000.00

*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 3.77. 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. 1807 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 Instant 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. 1807, 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-201604774
Bob Biard
General Counsel
Texas Lottery Commission
Filed: September 12, 2016

♦ ♦ ♦

Scratch Ticket Game Number 1832 "$7,500,000 Ultimate Cash"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1832 is "$7,500,000 ULTIMATE CASH". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1832 shall be $50.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1832.

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: SINGLE CHERRY SYMBOL, GOLD BAR SYMBOL, BANANA SYMBOL, DICE SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, SPADE SYMBOL, PINEAPPLE SYMBOL, BELL SYMBOL, SUN SYMBOL, ANCHOR SYMBOL, APPLE SYMBOL, HORSESHOE SYMBOL, LIGHTNING BOLT SYMBOL, LEMON SYMBOL, HEART SYMBOL, STRAWBERRY SYMBOL, CLUB SYMBOL, POT OF GOLD SYMBOL, FOUR LEAF CLOVER SYMBOL, WISHBONE SYMBOL, 01, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, VAULT

SYMBOL, 2X SYMBOL, 5X SYMBOL,10X SYMBOL, $50.00, $70.00, $100, $200, $500, $1,000, $2,000, $10,000 and $7,500,000.

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.1832 - 1.2D

PLAY SYMBOL	CAPTION
SINGLE CHERRY SYMBOL	CHERRY
GOLD BAR SYMBOL	BAR
BANANA SYMBOL	BANANA
DICE SYMBOL	DICE
CROWN SYMBOL	CROWN
DIAMOND SYMBOL	DIAMOND
SPADE SYMBOL	SPADE
PINEAPPLE SYMBOL	PNAPLE
BELL SYMBOL	BELL
SUN SYMBOL	SUN
ANCHOR SYMBOL	ANCHOR
APPLE SYMBOL	APPLE
HORSESHOE SYMBOL	HRSHOE
LIGHTNING BOLT SYMBOL	BOLT
LEMON SYMBOL	LEMON
HEART SYMBOL	HEART
STRAWBERRY SYMBOL	STRWBY
CLUB SYMBOL	CLUB
POT OF GOLD SYMBOL	GOLD
FOUR LEAF CLOVER SYMBOL	CLOVER
WISHBONE SYMBOL	WISHBN
01	ONE
03	THR
04	FOR
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

20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
VAULT SYMBOL	WIN
2X SYMBOL	WINX2
5X SYMBOL	WINX5
10X SYMBOL	WINX10
$50.00	FFTY$
$70.00	SVTY$
$100	ONHN
$200	TOHN
$500	FVHN

$1,000	ONTH
$2,000	TOTH
$10,000	10TH
$7,500,000	TPPZ

E. Serial Number - A unique 13 (thirteen) 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. Low-Tier Prize - A prize of $50.00 and $70.00.

G. Mid-Tier Prize - A prize of $100, $150, $200 or $500.

H. High-Tier Prize - A prize of $1,000, $2,000, $2,500, $10,000 or $7,500,000.

I. Bar Code - A 24 (twenty-four) 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 Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1832), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 020 within each Pack. The format will be: 1832-0000001-001.

K. Pack - A Pack of the "$7,500,000 ULTIMATE CASH" Scratch Ticket Game contains 020 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The back of Ticket 001 will be shown on the front of the Pack; the back of Ticket 020 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.

L. 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.

M. Scratch Game Ticket, Scratch Ticket or Ticket - Texas Lottery "$7,500,000 ULTIMATE CASH" Scratch Ticket Game No. 1832.

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, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "$7,500,000 ULTIMATE CASH" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 74 (seventy-four) Play Symbols. MYSTERY BONUS PLAY AREAS: If a player reveals two (2) matching Play Symbols in the same MYSTERY BONUS safe, the player wins $100. MAIN PLAY AREA: If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "VAULT" Play Symbol, the player wins the prize for that symbol instantly. If a player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that symbol. If a player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If a player reveals a "10X" Play Symbol, the player wins 10 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 74 (seventy-four) 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, Retailer Validation Code and Pack-Scratch 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, Retailer Validation Code and Pack-Scratch 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 74 (seventy-four) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch 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 74 (seventy-four) Play Symbols must be exactly one of those described in §1.2.C of these Game Procedures;

17. Each of the 74 (seventy-four) 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 Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns of either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket will win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to thirty-four (34) times.

D. GENERAL: On winning and Non-Winning Tickets, the top cash prizes of $10,000 and $7,500,000 will each appear at least once, except on Tickets winning thirty-four (34) times.

E. MYSTERY BONUS PLAY AREAS: A Ticket can win up to one (1) time in each of the four (4) MYSTERY BONUS play areas.

F. MYSTERY BONUS PLAY AREAS: A MYSTERY BONUS Play Symbol will not be used more than one (1) time per Ticket across all four (4) MYSTERY BONUS play areas, unless used in a winning combination.

G. MYSTERY BONUS PLAY AREAS: Winning combinations across all four (4) MYSTERY BONUS play areas will be different.

H. MAIN PLAY AREA: No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

I. MAIN PLAY AREA: Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

J. MAIN PLAY AREA: No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

K. MAIN PLAY AREA: The "VAULT" (WIN) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

L. MAIN PLAY AREA: The "VAULT" (WIN) Play Symbol will never appear on a Non-Winning Ticket.

M. MAIN PLAY AREA: The "VAULT" (WIN) Play Symbol will win the prize for that Play Symbol and will win as per the prize structure.

N. MAIN PLAY AREA: No more than three (3) "VAULT" (WIN) Play Symbols will appear on a Ticket.

O. MAIN PLAY AREA: The "2X" (WINX2) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

P. MAIN PLAY AREA: The "2X" (WINX2) Play Symbol will never appear more than once on a Ticket, unless restricted by other parameters, play action or prize structure.

Q. MAIN PLAY AREA: The "2X" (WINX2) Play Symbol will never appear on a Non-Winning Ticket.

R. MAIN PLAY AREA: The "2X" (WINX2) Play Symbol will win 2 TIMES the prize for that Play Symbol and will win as per the prize structure.

S. MAIN PLAY AREA: The "5X" (WINX5) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

T. MAIN PLAY AREA: The "5X" (WINX5) Play Symbol will never appear more than once on a Ticket, unless restricted by other parameters, play action or prize structure.

U. MAIN PLAY AREA: The "5X" (WINX5) Play Symbol will never appear on a Non-Winning Ticket.

V. MAIN PLAY AREA: The "5X" (WINX5) Play Symbol will win 5 TIMES the prize for that Play Symbol and will win as per the prize structure.

W. MAIN PLAY AREA: The "10X" (WINX10) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

X. MAIN PLAY AREA: The "10X" (WINX10) Play Symbol will never appear more than once on a Ticket, unless restricted by other parameters, play action or prize structure.

Y. MAIN PLAY AREA: The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

Z. MAIN PLAY AREA: The "10X" (WINX10) Play Symbol will win 10 TIMES the prize for that Play Symbol and will win as per the prize structure.

AA. MAIN PLAY AREA: YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 50 and $50).

BB. MAIN PLAY AREA: 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.

CC. MAIN PLAY AREA: On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "$7,500,000 ULTIMATE CASH" Scratch Ticket Game prize of $50.00, $70.00, $100, $150, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $70.00, $100, $150, $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 §2.3.B and §2.3.C of these Game Procedures.

B. To claim a "$7,500,000 ULTIMATE CASH" Scratch Ticket Game prize of $1,000, $2,000, $2,500 or $10,000, the claimant must sign the winning Scratch Ticket and 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. To claim a "$7,500,000 ULTIMATE CASH" top level prize of $7,500,000, the claimant must sign the winning Scratch Ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. 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.

D. As an alternative method of claiming a "$7,500,000 ULTIMATE CASH" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both 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.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. 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;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

F. 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 §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 "$7,500,000 ULTIMATE CASH" 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 "$7,500,000 ULTIMATE CASH" 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 Ticket Prizes. There will be approximately 3,600,000 Scratch Tickets in Scratch Ticket Game No. 1832. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1832 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$50	720,000	5.00
$70	450,000	8.00
$100	201,000	17.91
$150	19,500	184.62
$200	12,000	300.00
$500	14,550	247.42
$1,000	7,860	458.02
$2,000	3,570	1,008.40
$2,500	600	6,000.00
$10,000	120	30,000.00
$7,500,000	3	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 2.52. 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. 1832 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 Instant 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. 1832, 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-201604775
Bob Biard
General Counsel
Texas Lottery Commission
Filed: September 12, 2016

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Texas Department of Public Safety

Correction of Error

The Texas Department of Public Safety proposed new 37 TAC §13.51 in the September 9, 2016 issue of the *Texas Register* (41 TexReg 6956). Due to a *Texas Register* editing error, the rule text is not underlined. The rule should have been published as follows:

§13.51.Ephedrine, Pseudoephedrine, and Norpseudoephedrine.

(a) A wholesale distributor who sells, transfers, or otherwise furnishes a product containing ephedrine, pseudoephedrine, or norpseudoephedrine to a retailer shall obtain before delivering the product:

(1) The retailer's business name, address, area code, and telephone number;

(2) The name of the person making the purchase;

(3) The amount of the product containing ephedrine, pseudoephedrine, or norpseudoephedrine ordered; and

(4) Any other information required by the department.

(b) A wholesale distributor shall make an accurate and legible record of the information in subsection (a) of this section and the amount of the product containing ephedrine, pseudoephedrine, or norpseudoephedrine actually delivered. A wholesale distributor shall retain the record for a period of at least two years after the date of the transaction. The record shall be made available to the department upon request.

(c) Not later than ten business days after receipt of an order for a product containing ephedrine, pseudoephedrine, or norpseudoephedrine requesting delivery of a suspicious quantity of that product, the wholesale distributor shall report the suspicious order to the department on the form and in the manner approved by the department.

(d) A wholesale distributor who distributes a product containing ephedrine, pseudoephedrine, or norpseudoephedrine to a retailer shall make available for immediate inspection to any member of the department during regular business hours upon presentation of proper credentials all files, papers, processes, controls, or facilities appropriate for verification of a required record or report. If the wholesaler is

no longer in operation or closed, the records shall be made available within three business days.

(e) A wholesale distributor who fails to comply with the requirements of this section may be subject to administrative penalties, pursuant to Subchapter H of the Act and notification of the proper administrative or law enforcement authorities.

TRD-201604795

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Public Utility Commission of Texas

Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on September 7, 2016, for retail electric provider certification, pursuant to Public Utility Regulatory Act (PURA) §39.352.

Docket Title and Number: Application of Griddy Energy LLC for a Retail Electric Provider Certificate, Docket Number 46342.

Applicant requests an Option I retail electric certificate.

Information on the application may be obtained by contacting the commission 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 inquiries should reference Docket Number 46342.

TRD-201604736
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 9, 2016

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Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on September 6, 2016, for an amendment to certificated service area boundaries within Hays County, Texas.

Docket Style and Number: Application of Pedernales Electric Cooperative, Inc. and Bluebonnet Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for Electric Service Area Boundaries within Hays County. Docket Number 46340.

The Application: Pedernales Electric Cooperative, Inc. and Bluebonnet Electric Cooperative, Inc. filed an application for a service area boundary exception to better define the boundaries between their respective service areas.

Persons wishing to comment on the action sought or intervene should contact the commission no later than September 30, 2016, 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 46340.

TRD-201604729
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 9, 2016

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Notice of Application to Obtain a Sewer Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to obtain a sewer certificate of convenience and necessity (CCN) in Collin County, Texas.

Docket Style and Number: Application of Bear Creek Special Utility District for a Sewer Certificate of Convenience and Necessity in Collin County, Docket Number 46341.

The Application: On September 7, 2016, Bear Creek Special Utility District (Bear Creek) filed an application to obtain a new sewer certificate of convenience and necessity in Collin County. Bear Creek seeks single certification to approximately 14,300 acres that are currently not in a sewer certificate.

Persons wishing to intervene or comment on the action sought should contact the commission 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. A deadline for intervention in this proceeding will be established. 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 46341.

TRD-201604726
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 9, 2016

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Notice of Intent to Serve Decertified Area

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on July 15, 2016, of a notice of intent to provide water and sewer service to area decertified from Pinehurst Decker Prairie Water Supply Corporation's (Pinehurst WSC's) water certificate of convenience and necessity (CCN) No. 11768 in Montgomery County.

Docket Style and Number: Quadvest, L.P.'s Notice of Intent to Serve Area Decertified from Pinehurst Decker Prairie Water Supply Corporation in Montgomery County, Docket Number 46157.

The Application: On July 15, 2016, pursuant to Tex. Water Code §13.254 and 16 Tex. Admin. Code §24.113, Quadvest, L.P. (Quadvest) filed with the commission a notice of intent to provide water and sewer service to area decertified from Pinehurst WSC's CCN No. 11768. Quadvest and Pinehurst WSC reached an agreement on the monetary amount of compensation due Pinehurst WSC for any property rendered useless and valueless.

Persons wishing to comment should contact the commission 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 46157.

TRD-201604734
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 9, 2016

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Notice of Intent to Serve Decertified Area

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on July 6, 2016, of notice of intent to provide water service to a 32.261-acre tract in Montgomery County.

Docket Style and Number: Quadvest, L.P.'s Notice of Intent to Provide Service to Area Decertified from H-M-W Special Utility District in Montgomery County, Docket Number 46139.

The Application: Pursuant to Texas Water Code §13.254 and 16 Texas Administrative Code §24.113, Quadvest, L.P. (Quadvest) filed with the Public Utility Commission of Texas (commission) a notice of its intent to serve a 32.261-acre tract in Montgomery County that was decertified from water certificate of convenience and necessity No. 10342 held by H-M-W Special Utility District. The 32.261-acre tract at issue was decertified pursuant to Texas Water Code §13.254(a 5).

Quadvest and H-M-W Special Utility District agree that the agreement between the parties for compensation for the property rendered useless or valueless as a result of the decertification is reasonable and that there is no other property at issue.

Persons wishing to comment should contact the Public Utility Commission of Texas 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 46139.

TRD-201604788
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 13, 2016

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Texas Department of Transportation

Aviation Division - Request for Proposals for Construction Manager-At-Risk

The City of Cotulla (Owner), through its agent, the Texas Department of Transportation (TxDOT), intends to engage a qualified firm to provide Construction Manager at Risk (CMAR) services for the construction of a terminal building at the Cotulla/La Salle County Airport. This solicitation is being offered under the provisions of Government Code, Chapter 2269.

Seven completed, unfolded copies of Form AVN-553 (response) must be received by TxDOT Aviation Division no later than October 25, 2016, 2:30 p.m. Electronic facsimiles or responses sent by email will not be accepted. Please mark the envelope to the attention of Beverly Longfellow, using one of the delivery methods below:

Mail or Overnight Delivery

TxDOT - Aviation

200 East Riverside Drive

Austin, Texas 78704

***Hand Delivery or Courier**

TxDOT Riverside Campus, Building 150

150 East Riverside Drive, 1st Floor (check in at the guard's desk)

Austin, Texas 78704

Responses will be opened and read aloud on October 25, 2016, 2:30 p.m. in the offices of TxDOT Aviation Division, 150 East Riverside Drive, 5th floor South Tower, Room 107.

*If hand delivering your response, you must check in with the guard on the 1st floor main visitor's entrance on the east side of Building 150. The guard will contact the Aviation Division's reception desk to announce your arrival. At this time, please let the guard know if you are attending the opening or dropping off a response. If the guard contacts the Aviation Division's reception desk by the due date and time specified in this RFP, your response will be considered on time. An Aviation Division representative will meet you to accept your submittal. If a respondent wishes to attend the public opening of the responses, an Aviation Division representative will be available to escort respondents to the opening location. Please plan to arrive at least 30 minutes before the due date and time in order to accommodate any wait time while others are checking in with the guard.

It is the sole responsibility of the respondent to ensure that responses are completed on the correct form and received by TxDOT Aviation Division before the deadline indicated. Responses received on forms other than the AVN-553 or after the deadline, by mail or otherwise, will be rejected and returned unopened. However, nothing in this Request for Proposals (RFP) precludes TxDOT from requesting additional information at any time during the procurement process.

Nothing herein is intended to exclude any responsible firm or in any way restrain or restrict competition. On the contrary, all qualified firms are encouraged to submit responses. The Owner and TxDOT reserve the right to award in part or in whole or to reject any or all responses.

In accordance with Government Code, §2269.253, this will be a one-step procurement process for the selection of a CMAR firm. Respondents shall utilize the latest version of Form AVN-553, titled "Request for Proposals Construction Manager-At-Risk Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at *http://www.txdot.gov/business/projects/aviation.html.* The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration pages. Respondents must carefully follow the instructions provided on each page of the form. Responses may not exceed the number of pages in the response format. The response format consists of ten pages of data plus an Exhibit A where the CMAR will indicate its fees. Responses shall be stapled but not bound in any other fashion. RESPONSES WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. A PRIME PROVIDER MAY ONLY SUBMIT ONE RESPONSE. IF A PRIME PROVIDER SUBMITS MORE THAN ONE RESPONSE, THAT PROVIDER WILL BE DISQUALIFIED.

PROJECT DESCRIPTION AND BACKGROUND

The Owner, through its agent, TxDOT, seeks responses from qualified firms to provide CMAR services for the construction of a new terminal building to be located at the Cotulla/La Salle County Airport.

The scope of services for the terminal building, which is proposed to be approximately 3,500 square feet, is intended to provide a complete and useable facility for the City of Cotulla which can be put into operation immediately after acceptance by TxDOT and the Owner.

The proposed contract is subject to 49 CFR Part 26 concerning the participation of Disadvantaged Business Enterprises (DBE). The DBE goal for the preconstruction phase is 0%. The goal will be re-set for the construction phase. The TxDOT Project Manager is Stephanie Kleiber.

The scope of services includes all aspects of construction, including but not limited to the following:

1. During the design phase, the selected CMAR team will meet and collaborate with Owner, engineer, architect and TxDOT to gain a detailed understanding of the project requirements and general parameters under which the project will be designed and constructed. The respondent's expertise will be used to affect value engineering, establish a project schedule and ultimately determine the Guaranteed Maximum Price (GMP). The services include attending meetings, consultation of plan reviews, constructability reviews and cost estimating. The CMAR will serve as general contractor for the project during the construction phase. The selected CMAR will join the project team as soon as possible. The CMAR's preconstruction services should include construction cost estimates at the end of the schematic design and design development phases. Upon completion of the construction documents phase, the CMAR will solicit competitive bids in order to propose a GMP. If this pricing is consistent with previous budgets and cost estimates provided by the CMAR, and TxDOT/Owner is satisfied with the preconstruction services provided by the CMAR, then TxDOT/Owner intends to enter into an agreement with the CMAR for the construction of the project. TxDOT/Owner will have no obligation to continue with the selected CMAR if an acceptable GMP cannot be achieved, or if unforeseen circumstances make it necessary to cancel, delay or otherwise modify the project.

2. In accordance with the approved schedule and GMP, provide and/or secure and install all materials, labor, coordination, management, and supervisory activities necessary to complete construction of the project in accordance with the drawings, specifications, and other contract documents that will be prepared by the engineer, architect, and TxDOT/Owner.

3. The selected CMAR will be required to furnish a performance bond and payment bond, each in the full amount of the construction costs, executed by a surety company or surety companies authorized to execute surety bonds under and in accordance with the laws of the State of Texas.

4. Develop project schedule.

5. Coordinate construction plans with the Owner, engineer, architect and TxDOT following final approval from TxDOT.

CONSTRUCTION/CONSTRUCTION ADMINISTRATION

1. Complete construction.

2. Administer progress meetings and prepare and distribute minutes of the meetings, as agreed upon by TxDOT/Owner.

3. Prepare and submit pay applications on a monthly basis.

4. Schedule any special inspections as required by local ordinances.

5. Compile, review and submit project closeout documentation.

FEE STRUCTURE AND BUDGET

It is anticipated that the final contract will be based on a GMP. The budget for this project is approximately $1,000,000.00.

EVALUATION CRITERIA

The following criteria will be used in evaluating CMAR responses.

Composition and experience of CMAR team members (25 points): Provide experience with similar projects within the last five years, including previous projects using the CMAR delivery method. Indicate no more than six key team members. Provide educational backgrounds, work experience, areas of expertise, and specific experience with construction of similar kinds of facilities. [Sources of information: Aviation Project Construction Manager-At-Risk Team, Recent Airport Experience Form]

Technical approach to the project (10 points): Provide evidence of the firm's/team's understanding of the project and any unique aspects associated with the project. Describe specific problems and considerations to be addressed. Detail how the process of CMAR would be managed and handled. Address project oversight for the entire process and coordination with the Owner. Describe how changes, modifications and corrections would be addressed. [Sources of information: Proposed Technical Approach to Project]

Project schedule (10 points): Provide proposed time frame to complete and respond to architect/engineer following each phase of design. Demonstrate experience in meeting completion date schedules by providing the original construction duration and final construction duration on the last five projects. Provide appropriate explanation on the causation when a variance of 5% or more is experienced. [Sources of information: Project Schedule, Budget Compliance and Managerial Capabilities]

Budget compliance (10 points): For the same five projects listed above, demonstrate experience in maintaining construction budgets by providing the awarded budget and the final completion budget. Provide appropriate explanation on the causation when a variance of 5% or more above the awarded budget is experienced. [Sources of information: Project Schedule, Budget Compliance and Managerial Capabilities]

Managerial capabilities (10 points): Provide systematic approach to quality assurance and interdisciplinary coordination methodologies throughout all phases of the project. Provide previous experience with successful value engineering processes and any possible opportunities for value engineering on this project. [Sources of information: Project Schedule, Budget Compliance and Managerial Capabilities]

Compensation and fees (35 points): The offer (as more set out in Exhibit A, CMAR Proposal Form,) shall consist of a not-to-exceed fee for pre-construction services and construction general conditions. [Sources of information: Exhibit A, CMAR Proposal Form]

SELECTION PROCEDURE

The selection committee will be composed of TxDOT Aviation Division staff. The committee will have no more than 45 days after the date on which the responses are opened to evaluate and rank each proposal in accordance with the criteria established above. The final selection by the committee will generally be made following the completion of review of responses. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

COMMITMENT

Respondent understands and agrees that TxDOT and Owner have the ability to terminate the selection process at any time, and to reject any and all responses, and that TxDOT has made no representations, written or oral, that it will award a contract for this project. Furthermore, respondent recognizes and understands that any cost incurred by the respondent which arises from respondent's submittal of a response to this RFP shall be the sole responsibility of respondent.

REFERENCES

Responses must include references and contact information for a minimum of three (3) previously completed construction projects involving the management of various trade contractors, and the year in which each was constructed. References should be included on page five of the Form AVN-553. References of the top ranked respondents will be contacted. TxDOT reserves the right to contact references other than, and/or in addition to, those furnished by respondent.

BASIS FOR AWARD

The intent is to award a contract to the respondent whose qualifications and pricing are considered to provide the best value to TxDOT/Owner.

Information gathered during the selection process, interviews, and any reference checks, in addition to the evaluation criteria stated in the RFP, and any other information or factors deemed relevant by TxDOT/Owner, shall be utilized in the final award.

FURTHER INFORMATION

Please contact TxDOT Aviation Division for any technical or procedural questions at avnrfq@txdot.gov or 1-800-68-PILOT. For procedural questions, please contact Beverly Longfellow, Grant Manager. For technical questions, please contact Stephanie Kleiber, Project Manager.

TRD-201604798
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 14, 2016

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Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

The City of Rockwall, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a professional architectural/engineering firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualification statements for the current aviation project as described below.

Current Project: City of Rockwall; TxDOT CSJ No.: 1718ROCKW. Scope:

Provide engineering/design services, including construction administration, to:

1. Rehabilitate and mark Runway 17-35;
2. Rehabilitate airport entrance road;
3. Rehabilitate and repair apron;
4. Rehabilitate T-hangar access and taxiways; and
5. Construct ditches and install culverts.

The Agent, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that any contract entered into pursuant to this advertisement, that disadvantaged business enterprises will be afforded full and fair opportunity to submit in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The proposed contract is subject to 49 CFR Part 26 concerning the participation of Disadvantaged Business Enterprises.

The DBE goal for the design phase of the current project is 8%. The goal will be re-set for the construction phase. TxDOT Project Manager is Ryan Hindman P.E.

Utilizing multiple engineering/design and construction grants over the course of the next five years, future scope of work items at the Ralph M. Hall/Rockwall Municipal Airport may include the following:

1. Improve airfield drainage;
2. Rehabilitate and repair airfield pavement;
3. Relocate parallel taxiway; and
4. Construct new airport entrance road.

The City of Rockwall reserves the right to determine which of the above services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation, the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at *http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.html* by selecting "Ralph M. Hall/Rockwall Municipal Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

AVN-550 Preparation Instructions:

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html.* The form may not be altered in any way. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight pages of data plus one optional illustration page. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. Responses to this solicitation WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

The completed Form AVN-550 **must be received** in the TxDOT Aviation eGrants system no later than October 18, 2016, 11:59 p.m. (CDST). Electronic facsimiles or forms sent by email or regular/overnight mail will not be accepted.

Firms that wish to submit a response to this solicitation must be a user in the TxDOT Aviation eGrants system no later than one business day before the solicitation due date. To request access to eGrants, please complete the Contact Us webform located at *http://txdot.gov/government/funding/egrants-2016/aviation.html.*

An instructional video on how to respond to a solicitation in eGrants is available at *http://txdot.gov/government/funding/egrants-2016/aviation.html.*

Step by step instructions on how to respond to a solicitation in eGrants are also posted at *http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.html.*

The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html* under Information for Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations for the design and bidding phases. The selection committee does, however, reserve

the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Sheri Quinlan, Grant Manager. For technical questions, please contact Ryan Hindman P.E., Project Manager.

For questions regarding responding to this solicitation in eGrants, please contact the TxDOT Aviation help desk at 1-800-687-4568 or avn-egrantshelp@txdot.gov.

TRD-201604800
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 14, 2016

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Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

The City of San Marcos, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a professional architectural/engineering firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualification statements for services described below.

Airport Sponsor: City of San Marcos TxDOT CSJ No. 17HGSMRCO; Scope: Provide architectural and engineering/design services, including construction administration, to construct a city-owned box hangar at San Marcos Regional Airport in San Marcos, Texas.

The Agent, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that any contract entered into pursuant to this advertisement, that disadvantaged business enterprises will be afforded full and fair opportunity to submit in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The proposed contract is subject to 49 CFR Part 26 concerning the participation of Disadvantaged Business Enterprises. The DBE goal for the design phase is set at 13%. The goal will be re-set for the construction phase. The TxDOT Project Manager is Stephanie Kleiber, P.E.

To assist in your qualification statement preparation, the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html* by selecting "San Marcos Regional Airport."

AVN-550 Preparation Instructions:

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568).

The form may be emailed by request or downloaded from the TxDOT website at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html*. The form may not be altered in any way. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight pages of data plus one optional illustration page. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. Responses to this solicitation WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

The completed Form AVN-550 **must be received** in the TxDOT Aviation eGrants system no later than October 25, 2016, 11:59 p.m. (CDST). Electronic facsimiles or forms sent by email or regular/overnight mail will not be accepted.

Firms that wish to submit a response to this solicitation must be a user in the TxDOT Aviation eGrants system no later than one business day before the solicitation due date. To request access to eGrants, please complete the Contact Us web form located at *http://txdot.gov/government/funding/egrants-2016/aviation.html.*

An instructional video on how to respond to a solicitation in eGrants is available at *http://txdot.gov/government/funding/egrants-2016/aviation.html.*

Step by step instructions on how to respond to a solicitation in eGrants will also be posted in the RFQ packet at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html.*

The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html* under Information for Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations for the design and bidding phases. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Beverly Longfellow, Grant Manager. For technical questions, please contact Stephanie Kleiber, Project Manager.

For questions regarding responding to this solicitation in eGrants, please contact the TxDOT Aviation help desk at 1 (800) 687-4568 or *avn-egrantshelp@txdot.gov.*

TRD-201604801
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 14, 2016

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Aviation Division - Request for Qualifications for Professional Services

The City of Bonham, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a qualified firm for professional services. This solicitation is subject to 49 U.S.C. §47107(a)(17) and will be administered in the same manner as a solicitation conducted under Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualifications for professional services as described below.

Airport Sponsor: City of Bonham, TxDOT CSJ No. 16MPBNHAM. Scope: Prepare an Airport Master Plan update report and Airport Layout Plan update using the guidance found in Advisory Circular (AC) 150/5070-6B, Airport Master Plans. The Airport Master Plan will be tailored to the individual needs of Bonham Municipal Airport in Bonham, Texas.

The Agent, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that any contract entered into pursuant to this advertisement, that disadvantaged business enterprises will be afforded full and fair opportunity to submit in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The proposed contract is subject to 49 CFR Part 26 concerning the participation of Disadvantaged Business Enterprises. The DBE goal is set at 0%. The TxDOT Project Manager is Daniel Benson.

Interested firms shall utilize the Form AVN-551, titled "Qualifications for Aviation Planning Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html.* The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-551 template. The AVN-551 format consists of eight 8 ½" x 11" pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11" x 17" and may be folded to an 8 ½" x 11" size. A prime provider may only submit one AVN-551. If a prime provider submits more than one AVN-551, that provider will be disqualified. AVN-551s shall be stapled but not bound or folded in any other fashion. AVN-551s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

Please note:

SEVEN completed copies of Form AVN-551 must be received by TxDOT, Aviation Division no later than October 25, 2016, 4:00 p.m. (CDST). Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Beverly Longfellow, using one of the delivery methods below:

Overnight Delivery

TxDOT - Aviation

200 East Riverside Drive

Austin, Texas 78704

Hand Delivery or Courier

TxDOT Riverside Campus, Bldg. 150

150 East Riverside Drive, 1st Floor

(MUST check in at guard's desk)

Austin, Texas 78704

*If hand delivering your response, you must check in with the guard on the 1st floor main visitor's entrance on the east side of Building 150. The guard will contact the Aviation Division's reception desk to announce your arrival. If the guard contacts the Aviation Division's reception desk by the due date and time specified in the RFQ, your response will be considered on time. An Aviation Division representative will meet you downstairs to accept your submittal. Please plan to arrive at least 30 minutes before the due date and time in order to accommodate any wait time while others are checking in with the guard.

The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-551s. The committee will review all AVN-551s and rate and rank each. The evaluation criteria for airport planning projects can be found at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html* under Information for Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Beverly Longfellow, Grant Manager. For technical questions please contact Daniel Benson, Project Manager.

TRD-201604799
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 14, 2016

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Texas Windstorm Insurance Association

Request for Proposals

Purpose of Request for Proposals

The Texas Windstorm Insurance Association (TWIA) will issue a Request For Proposals (RFP) for Reinsurance Brokerage and Advisory Services. As described in the RFP, the purpose is to obtain proposals from qualified Respondents for reinsurance brokerage and advisory services.

Proposal/Response Format

The RFP will be published on the TWIA website on or about September 23, 2016 at: http://www.twia.org. Further information regarding the RFP will also be available on TWIA's website at this address, including any updates, amendments, and clarifications.

Mandatory Response Requirements

Applications must meet all requirements of the RFP. Applications will be reviewed by the Association and evaluated as outlined in the RFP.

Rights and Obligations

TWIA is not responsible for any costs incurred in responding to this RFP, and TWIA reserves the right to accept or reject any or all applications in its sole discretion. TWIA is under no obligation to award a contract on the basis of the RFP. TWIA reserves the right to issue other RFPs for the services outlined in this RFP.

Contact Information

Any requests for information for the purpose of this RFP should be directed to:

Email:

jmurphy@twia.org

Mail:

Texas Windstorm Insurance Association

Attn: James Murphy

5700 South Mopac, Building A

Austin, Texas 78749

TRD-201604805

James Murphy

Chief Actuary

Texas Windstorm Insurance Association

Filed: September 14, 2016

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Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://texasattorneygeneral.gov/og/open-government

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.texas.gov

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

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 40 (2015) is cited as follows: 40 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 "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 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
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

SALES AND CUSTOMER SUPPORT

Sales - To purchase subscriptions or back issues, you may contact LexisNexis Sales at 1-800-223-1940 from 7am to 7pm, Central Time, Monday through Friday. Subscription cost is $382 annually for first-class mail delivery and $259 annually for second-class mail delivery.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7am to 7pm, Central Time, Monday through Friday.

Phone: (800) 833-9844
Fax: (518) 487-3584
E-mail: customer.support@lexisnexis.com
Website: www.lexisnexis.com/printcdsc

LexisNexis®
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